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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 882

MARION H. ALLEN, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA, PETITIONER

vs.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 18, 1938
CERTIORARI GRANTED APRIL 11, 1938

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TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No.

W. E. PAGE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA, Appellant,	)	
versus	)	No. 770
	)	IN EQUITY.
REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, Appellee.	)	

Appeal from the District Court of the United States for the Northern District of Georgia, Atlanta Division.

LAWRENCE S. CAMP, ESQ.,
United States Attorney, Atlanta, Ga.
M. NEIL ANDREWS, ESQ.,
Asst. United States Attorney, Atlanta, Ga.
M. H. EUSTACE, ESQ.,
Asst. Attorney General, Washington, D. C.

Solicitors for Appellant.

HAROLD HIRSCH, ESQ., MARION SMITH, ESQ.,
and M. E. KILPATRICK, ESQ.,
1045 Hurt Building, Atlanta, Ga.

Solicitors for Appellee.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA	)	
	)	NO. 770
v.	)	
	)	IN EQUITY.
W. E. PAGE, COLLECTOR OF INTERNAL REVENUE	)	

BILL OF COMPLAINT

TO THE HONORABLE, THE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA:

The "Board of Regents of the University System of Georgia," a department of the State Government of Georgia, styled "Regents of the University System of Georgia," a corporation organized under the laws of the State of Georgia, brings this its bill of complaint against W. E. Page, Collector of Internal Revenue of Atlanta, Georgia, District, and respectfully shows:

1.

That complainant is a department of the State Government of Georgia, incorporated by the Act of the Georgia Legislature in the year 1931 (Georgia Laws, 1931, pps. 20-31).

2.

That the defendant herein, W. E. Page, is Collector of Internal Revenue of the Atlanta, Georgia, District, and is a citizen and resident of Atlanta, Georgia, in said Northern District of Georgia.

3.

That this suit involves an actual controversy between a department of the State of Georgia and the Collector of Internal Revenue of said Atlanta, Georgia, District with respect to an internal revenue measure of the United States, to-wit: The Revenue Act of 1926, Sec. 500 of said Act as amended by the Revenue Act of 1932, Sec. 711 (e).

4.

That two of the branches of the said University System of Georgia created by the said Act of the Georgia Legislature of 1931 are the University of Georgia, located at Athens, Georgia, and the School of Technology at Atlanta, Georgia, each of which is, and at all times herein mentioned have been operated under the supervision and control of the said Board of Regents.

5.

That the said University of Georgia and School of Technology each has a number of mere internal divisions or departments, such as mathematics, military, physics, chemistry and athletic departments, each of which exercises its part in the educational program, being duly authorized so to do by complainant herein.

6.

That each said branch through its said athletic department carries on and promotes as an integral part of its educational activities various physical training programs for its student body, including intercollegiate athletic contests with other colleges and universities in the South and elsewhere.

7.

That the physical training and education incident to said contests, as well as the contests themselves, are a part of the cirricula activities of the said branches of the University System of Georgia, carried out by said branches of the said department of government of the State of Georgia, with the consent and approval and under the direction of said Board of Regents.

8.

That the said athletic department of each of said branches of the University System of Georgia has collected, and is presently engaged in collecting, for complainant, to be by complainant used for said branch of the government of the State of Georgia in furthering and carrying on its said educational and governmental functions, admissions to its said intercollegiate athletic contests.

9.

That recently, to-wit: on the 24th day of October, 1934, defendant herein, through a duly authorized deputy collector, whose exact name is unknown, served upon Charles E. Martin, an employee of the University of Georgia, a warrant for distraint, a copy of which is hereto attached and marked Exhibit "A"

and made a part hereof, together with a notice of lien, copy of which is hereto attached as Exhibit "B", and two demands, copies of which are hereto attached and marked Exhibits "C" and "D", respectively, demanding payment from said Charles E. Martin the sum of Eight Hundred Ninety-Five Dollars and thirty-seven cents ($895.37), for certain alleged admission taxes allegedly due on account of admissions collected by said department, as above alleged, during the months of September and October, 1934.

10.

That the defendant likewise, through a duly authorized deputy, on October 25, 1934, served said warrant for distraint and a notice of levy, copy of which is hereto attached as Exhibit "E", upon the Trust Company of Georgia in Atlanta, Georgia, and the Citizens and Southern National Bank in Athens, Georgia, levying upon a certain account at the Trust Company of Georgia nominally in the name of "University of Georgia, Department of Athletics," to the extent of $895.37, and upon an account nominally under the name of "Charles Martin, Trustee," in the Citizens & Southern National Bank.

11.

That there is no such entity as "University of Georgia, Department of Athletics," said accounts so levied upon being so styled and carried for convenience only, but being the sole and exclusive property of complaintant herein.

12.

That the defendant likewise on October 25, 1934,

through a duly authorized deputy, served similar papers upon Doctor A. H. Armstrong, an employee of the School of Technology, and upon The First National Bank of Atlanta, demanding from the said A. H. Armstrong payment of the sum of Three Thousand Nine Hundred Fourteen Dollars and sixty-three cents ($3,914.63) as alleged admission taxes on account of admissions collected by said School of Technology during the months of September and October, 1934, as above alleged and levying upon an account in said bank belonging to complainant.

13.

That said warrants for distraint cover alleged taxes allegedly due from various individuals who paid admissions to said athletic contests, which taxes, however, said defendant is attempting to collect from said branches of the government of the State of Georgia.

14.

That the sums demanded by the defendant, and for which said distraints were levied, represent ten per cent (10%) of certain admissions so collected by said athletic departments or associations of said branches, the said sums so levied upon being the sole and exclusive property of complainant.

15.

That said warrants for distraint are proceeding illegally and contrary to law in that complainant herein and its said branches constitute a department of the government of the State of Georgia, engaged, as herein mentioned, in carrying out purely governmental functions incident to the government of the State of

Georgia, and as such in carrying out the said intercollegiate contests for which it charged and collected admissions was engaged in a purely governmental operation or function and is not and was not subject to taxation thereon, under the Revenue Acts of the United States, nor is nor was subject to any control or interference by the Federal Government nor any of its branches, including the Congress and the defendant.

16.

That the Act under which the defendant is proceeding provides as follows:

> * * * "On and after the date this title takes effect, there shall be levied, assessed, collected, and paid, in lieu of the taxes imposed by section 500 of the Revenue Act of 1924—
>
> "(1) A tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place on or after such date, including admission by season ticket or subscription, to be paid by the person paying for such admission; but where the amount paid for admission is 75 cents or less, no tax shall be imposed;"
> *Revenue Act of* 1926, *Sec.* 500 (*a*) (1)
>
> * * * "(b) No tax shall be levied under this title in respect of—(1) Any admissions all the proceeds of which inure (A) exclusively to the benefit of religious, educational, or charitable institutions, societies, or organizations, societies for the prevention of cruelty to children or animals, or societies or organizations conducted for the sole purpose of maintaining symphony orchestras and receiving substantial support from voluntary contributions, or of improving any

city, town, village, or other municipality, or of maintaining a cooperative or community center moving-picture theatre—if no part of the net earnings thereof inures to the benefit of any private stockholder or individual; or (B) exclusively to the benefit of persons in the military or naval forces of the United States; or (C) exclusively to the benefit of persons who have served in such forces and are in need; or (D) exclusively to the benefit of National Guard organizations, Reserve Officers' associations or organizations, posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private stockholder or individual; or (E) exclusively to the benefit of members of the police or fire department of any city, town, village, or other municipality, or the dependents or heirs of such members; or * * *

"(e) The exemption from tax provided by subdivision (b) (1) (A) shall not be allowed in the case of admissions to wrestling matches, prize fights, or boxing, sparring, or other pugilistic matches or exhibitions. The exemption from tax provided by subdivision (b) (1) shall not be allowed in the case of admissions to any athletic game or exhibition the proceeds of which inure wholly or partly to the benefit of any college or university (including any academy of the military or naval forces of the United States)."

Section 500 (*b*) (1) (*e*) *Revenue Act of* 1926, *as added by Section* 711 (*e*) *Revenue Act of* 1932.

17.

That a proper construction, interpretation and

enforcement of said Act would exempt from the operation thereof any and all branches or departments of the governments of the several States, including complainant.

18.

That the Commission of Internal Revenue has, however, construed said Act as being applicable to and enforceable against the departments of government of the several States, including complainant, the ruling of the Commissioner being published as "Informal Ruling No. 7" on July 28, 1932, as follows:

> "State universities must collect the tax on admissions to football games. The burden of the tax falls, not on the State, but on the persons paying the admission charges."

19.

That the defendant, who is in privity with the Commissioner of Internal Revenue, is seeking, under said Act, as herein alleged, and pursuant to the said ruling of the Commissioner of Internal Revenue to collect said sums from complainant representing alleged taxes of numerous individuals, contrary to the wishes of and forcibly against the will of complainant and its said various departments, although complainant's said branches, pursuant to instructions from complainant, have refused to and have not collected any tax for the defendant or for the Federal Government at any time, and although the tax liability, if it exists, is the liability of said numerous individuals.

20.

That complainant's said branch, the University of

Georgia, has, pursuant to complainant's instructions, placed the following notice upon each ticket so sold:

> "The University of Georgia, being an instrumentality of the government of the State of Georgia, contends that it is not liable for any admissions tax. The amount stated as a tax is so stated because the University is required to do so by Treasury regulations pending a decision as to its liability in this respect. This amount is collected by the University as a part of the admission and will be retained as such unless it is finally determined that the University is itself liable for the tax,"

the same notice, except for the name, School of Technology, appearing upon each ticket so sold by the School of Technology.

21.

That the said Act so construed by the Commissioner of Internal Revenue, and which the defendant is attempting forcibly and against the will of complainant and its several departments to carry out, as herein alleged, is unconstitutional, being violative to the Tenth Amendment to the Constitution of the United States, which provides that the powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people, in that so construed it attributes to Congress a power not delegated to the United States by the Constitution nor prohibited by it to the States, namely, the power to control and carry out without any interference whatsoever its educational, governmental functions, which power is reserved to the respective States.

22.

That the complainant and its said departments are branches of the State Government of Georgia, and as such refuse to be burdened and cannot legally, against their will, be burdened with the duty of collecting taxes for the Federal Government, or for the defendant.

23.

That complainant has no remedy at law by paying said alleged taxes and suing to recover same, as under the Commissioner's interpretation of said Act the tax is imposed on the individual who attends such athletic contests, and if said tax be paid by complainant it will be irreparably damaged, as the amount so paid would be irrevocably lost in that claims for refund of internal revenue taxes paid are maintainable only by the person or corporation liable for the tax paid, and neither complainant nor its said branches is liable for such tax under the law and under the construction placed on said law by the Commissioner of Internal Revenue and the defendant. Were it possible under the law, moreover, for complainant through its said departments to pay the amount claimed by defendant and to prosecute a claim for refund therefor, such procedure would involve a multiplicity of suits since admissions are collected by complainant's said departments approximately nine out of every twelve months of each year.

24.

That the action of defendant is seeking, by distraint upon the property of complainant, to collect from complainant's said branches admission taxes allegedly due not from complainant or its said branches but from

various individuals, is contrary to law, in that collection of taxes by distraint is available only against the person against whom the tax is imposed and complainant is not such person.

25.

That said proceedings under said warrants for distraint and levies interfere with the proper operation of the government of the State of Georgia and prevents the use of complainant's said funds and should be restrained.

26.

That the circumstances involved, as herein alleged, whereby the defendant is attempting to collect from branches of complainant, departments of the government of the State of Georgia, taxes allegedly due from various individuals, for which there is no liability on complainant or its said department, are exceptional and extraordinary.

27.

That the State of Georgia, including complainant and its branches, is sovereign and independent in its sphere of governmental action and operation, as herein alleged, and is entitled in carrying out its said governmental functions to be exempt from such interference or control as is being attempted by the befendant, as herein alleged.

28.

That if an injunction does not issue as prayed for hereinafter, complainant will suffer irreparable injury and damage through the actions of defendant, his

agents, deputies, servants and employees, herein complained of and as further shown, complainant has no adequate remedy at law.

29.

That complainant, as a matter of protection to itself, has reserved and set aside ten per cent (10%) of the amount of all admissions so collected by its branches, and a part of this ten percent (10%) so set aside and deposited in banks represents the accounts on which the warrants for distraint hereinbefore referred to have been levied.

30.

That complainant, a department of the State of Georgia, has no intention of violating any law, State or Federal, and honestly desires that there be declared by this court the legal right and relations between the parties hereto involving the actual controversy hereinbefore alleged, this controversy arising each time an admission is collected by any of the various branches of complainant.

31.

That the individuals who paid admission to the said branches of complainant are not liable for any admission taxes thereon, in that the collection of said admissions is one means by which complainant, through said branches, receives revenue for the purpose of carrying out its said governmental functions, and any tax imposed upon individuals attending said athletic contests would constitute plain interference with and a burden upon the governmental functions of the State of Georgia.

WHEREFORE, complainant prays that this court, nder the provisions of the Act of Congress of June 14, 934, as set out in USCA, Title 28, section 400, declare hat complainant and its said departments, being ranches of the government of the State of Georgia, ngage in the matters herein alleged in purely govern- ental functions, are not liable for any admission axes by reason of the collection of admissions to said thletic contests, and are not required to collect any axes for the Federal Government or for the defendant y reason of said admissions so collected, and that he complainant and its said departments in the natters hereinbefore alleged are engaged in purely overnmental functions and are not subject to the nterference attempted by the defendant herein, and hat Section 500 (a) of the Revenue Act of 1926, s amended, properly construed does not apply to overnmental functions so carried on by complainant nd its branches, and that as construed and as sought o be enforced by the defendant against complainant, hat said Act is unconstitutional, being violative of he Tenth Amendment to the Constitution of the Jnited States, in that Congress has no power to tax he means or instrumentalities of nor to interfere with he governmental functions of the State of Georgia.

Complainant prays further, pending said declaration y the court, that the defendant, his agents, deputies, ervants and employees be enjoined ex parte and tem- orarily from proceeding further with said levies and varrants for distraint, or any other proceeding gainst complainant herein, or any of its departments, ith respect to alleged admissions taxes, complainant ereby offering to pay into court the said disputed

funds levied upon pending the declaration by this court of the legal relations of the parties involved and the final decree and order herein.

Complainant further prays that the injunction herein prayed for be made permanent upon the declaration by the court herein requested.

Complainant further prays that it have judgment against the defendant for costs herein, and that there be issued out of and under the seal of this Honorable Court a subpoena of the United States of America, directed to the said defendant, commanding him on a day certain to appear and make answer to this bill of complaint and prayer for declaration of rights and legal relations and to abide and perform all orders and decrees as may be herein made.

REGENTS OF THE UNIVERSITY
SYSTEM OF GEORGIA,
By Marion Smith, Complainant.
Chairman Board of Regents, University System of Georgia.

M. J. YEOMANS,
Attorney General, State of Georgia.

HAROLD HIRSCH & MARION SMITH
M. E. KILPATRICK,
Solicitors and Counsel for Complainant.

NOTE: Exhibits A, B, C, D, omitted here, same appear in the Statement of evidence beginning at page.....

EXHIBIT "E"

NOTICE OF LEVY

UNITED STATES OF AMERICA
.....Collection District,
State of GEORGIA

To **Trust Company of Georgia** (Name of person holding property, moneys, etc., belonging to taxpayer)
At **Atlanta, Georgia**

You are hereby notified that there is now due, owing, and unpaid from **University of Georgia Department of Athletics, Athens, Georgia** to the United States of America the sum of **Eight Hundred Ninety Five and 37/100 dollars ($895.37)** (Insert amount of tax, penalties, and interest due) as and for an internal revenue tax.

You are further notified that all property, rights to property, moneys, credits, and/or bank deposits now in your possession and belonging to the aforesaid **Univ. of Ga. Department of Athletics** (Insert name of taxpayer) and all sums of money owing from you to the said **Univ. of Ga. Department of Athletics (insert name of taxpayer)** are hereby siezed and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the sum of **Eight Hundred Ninety Five and 37/100 dollars ($895.37)** (Insert amount of tax, penalties, and interest) of the amount now owing from you to said **Univ. of Ga. Department of Athletics** (Insert name of taxpayer) or for

such lesser sum as you may be indebted to him, to be applied in payment of the said tax liability.

Dated at **Atlanta. Georgia** this **24th** day of **October 1934.**

(SGD) W. E. PAGE,
Collector of Internal Revenue

Service Acknowledged,
(Sgd.) Dameron Black, Vice-Pres.
10/25/34

U. S. Government Printing
Office: 1933 2-12503

GEORGIA:
FULTON COUNTY:

BEFORE ME, the undersigned attesting officer, personally appeared MARION SMITH, who, being duly sworn, on oath says:

That he is the Chairman of the Board of Regents of the University System of Georgia; that deponent has read the within and foregoing bill of complaint and that he is familiar with the facts alleged therein, and that as to those allegations as to which he has personal knowledge he knows them to be true, and as to the other allegations derived from information given him by others, he believes them to be true.

MARION SMITH.

Sworn to and subscribed before me,
this the 27th day of October, 1934.

M. E. GRACE,
Notary Public.
(NOTARIAL SEAL)

ORDER TO SHOW CAUSE

The foregoing bill of complaint of the Regents of the University System of Georgia, praying for a declaration of rights and legal relations between the parties and for an injunction ex parte and temporarily pending said declaration, being read and considered, the same is hereby sanctioned and ordered filed.

IT IS FURTHER ORDERED that subpoena issue as prayed and be served on the defendant, together with a copy of this bill of complaint and order, and that the defendant show cause before me, if any he has, at the United States Court House in Atlanta, Georgia, at 10 o'clock, A. M., on the 14th day of Nov., 1934, why an interlocutory injunction should not be granted as prayed, pending the declaration herein of the legal rights and relations of the parties with leave to move for an earlier restraining order should the necessity arise.

This the 9th day of Nov. 1934.

E. MARVIN UNDERWOOD,
UNITED STATES DISTRICT JUDGE.

Filed November 9th, 1934.

TITLE OMITTED.

AMENDMENT

TO THE HONORABLE, THE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA:

COMES NOW the complainant in the above entitled cause and with leave of court amends its complaint heretofore filed, by adding the following paragraphs, to-wit:

32.

That the cirricula at both of its said branches, the

University of Georgia and the School of Technology, include departments of physical education; at the University of Georgia the various courses and activities which make up this department of physical education are selected by the faculty through a director of athletics under the direct control and supervision of the President of the University of Georgia and of a committee of faculty members appointed by the President of the University of Georgia.

(a) That the department of physical education is in charge of a number of professors and instructors of physical education.

(b) That the University of Georgia requires for all degrees for male students, except premedical and pharmacy degrees, two (2) years of physical education for all men who cannot qualify for R. O. T. C. training.

(c) The physical education program includes physical education courses, intermural athletics, interfraternal athletics and intercollegiate athletics. The intercollegiate athletic program composes golf, track, cross-country, tennis, swimming, basket ball, baseball, football and boxing, and at the University of Georgia during the year 1934, there was approximately thirty (30%) per cent. of the male students who participated in the intercollegiate athletic phase of the physical athletic program; there was an average of approximately thirty (30%) per cent. of the student body in addition to those competing in intercollegiate athletics who were participating in similar intermural and interfraternal athletic contests; during the year 1933-1934, the total number of students in intercollegiate, intermu-

ral and interfraternal athletics was approximately eighteen hundred fifty-eight (1858), this number being fairly constant every year and increasing with the attendance. Allowing for duplication in the various athletic events it is estimated that there are approximately seventy-five (75%) per cent. to eighty (80%) per cent. of the male students of the University of Georgia so engaged in some form of athletics or some form of physical education.

(d) All of these contests and activities are supervised and directed by the faculty of the University of Georgia and the said program is approved by complainant herein.

(e) Exhibit "F" hereto attached shows in detail the courses in physical education which form a part of the physical educational program, in addition to active intermural, interfraternal and intercollegiate athletics, said Exhibit "F" being a bulletin of the University of Georgia issued for the 1933-1934 term; further, the courses in physical education and the cirriculum leading to the degree of Bachelor of Science in physical education are shown in this same Exhibit "F"; attached hereto as Exhibit "G" is a similar bulletin of the University of Georgia showing on pages ten and eleven thereof similar information.

(f) The said program of physical education including intermural, interfraternal and intercollegiate athletics is constantly increasing in its scope of activity.

(g) That a similar program is in effect in the School of Technology and is similarly selected, supervised

and handled by the faculty of that branch with the approval of complainant, with approximately the same percentage of students engaging therein.

(h) That all students at both said branches of the complainant are required to pay an athletic fee each year, this amount being used to cover part of the expense of the athletic program, and to cover the remainder of the expense of the athletic and physical education program, the said branches are allowed by complainant to and actually do charge incidental admissions to the intercollegiate athletic contests. These funds so collected are the funds of complainant, but complainant allows the said branches to administer them for the sole benefit of the educational programs at said branches.

(i) That the benefit of said admissions inures wholly and exclusively to the said educational programs at said branches, approximately seventy-five (75%) per cent. to eighty (80%) per cent. of the student bodies at each of said branches receiving the benefits thereof as herein alleged.

(j) That the said funds are administered by the faculties of the said branches and are used to cover equipment in the physical educational program, salaries of professors and instructors, laundry, light, heat, water, rifle team supplies, telephone and telegraph, maintenance of athletic fields (labor and material), maintenance of stadium, tennis courts, gymnasiums, polo fields, construction of new athletic fields, upkeep of swimming pool, including heat, water, chlorination and disinfectant, medical supplies, doctors' and hos-

pital bills for students, doctors' and medical supplies, travelling expenses of athletic teams, and in addition thereto at various times the funds have been used for such purposes as paying salaries of professors in other departments, purchasing additional land for complainant, paying school physicians and other general uses incident and essential in the program of education at said branches.

33.

That at one time in the past not involved in this suit, complainant thru one of its branches, the School of Technology, made a return of admissions collected, and paid an amount as a tax to the Collector of Internal Revenue for the said district and then filed a claim for refund which was denied by the Commissioner of Internal Revenue on the ground among others that the complainant's said branch was not the taxpayer on whom the tax was imposed by law.

34.

That the University of Georgia which is coeducational offers thirty (30) courses in physical education for women and there were during 1933-1934 approximately three hundred (300) women per day engaged in the physical education program and of the thirty (30) courses offered, all except two are electives for all degrees offered to women.

35.

Amending paragraph 13 of the original bill of complaint, complainant alleges that said warrants for distraint cover either: (1) alleged taxes allegedly due from various individuals who paid admissions to said ath-

letic contests, which taxes, however, said defendant is seeking to collect from complainant, or (2) that said warrants for distraint cover in fact penalties under Section 1114 of the Revenue Act of 1926, said penalties being criminal and punitive in nature.

WHEREFORE, complainant prays that this amendment be allowed and ordered filed.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA,
By Marion Smith,
Chairman of the Board of Regents,
COMPLAINANT.

M. J. YEOMANS,
Attorney General, State of Ga.

HAROLD HIRSCH & MARION SMITH
M. E. KILPATRICK,
Solicitors and Counsel for Complainant.

GEORGIA:
FULTON COUNTY:

BEFORE ME, the undersigned attesting officer, personally appeared MARION SMITH, who, being duly sworn, deposes and says that he is Chairman of the Board of Regents of the University System of Georgia; that he is informed as to the contents of the within and foregoing amendment and that based

upon such information he believes the allegations therein to be true.

MARION SMITH

Sworn to and subscribed before me,
this 10 day of January, 1935.

M. E. GRACE,
Notary Public, Fulton County, Ga.

ORDER ALLOWING AMENDMENT.

It appearing to the court that a copy of the above and foregoing amendment has been served on the solicitor for the defendant, it is ordered that said amendment be allowed and ordered filed, subject to objection.

This 11th day of January, 1935.

E. MARVIN UNDERWOOD,
UNITED STATES JUDGE.

Service acknowledged, copy received this 11th day of January, 1935.

LAWRENCE S. CAMP,
U. S. Attorney.
By I. K. HAY, *Asst. U. S. Atty.*

Filed Jan. 11, 1935.

EXHIBIT "F"

BULLETIN OF THE UNIVERSITY OF GEORGIA

Volume XXXIII August, 1933 No. 11e–Serial No. 546

Entered at the Post Office at Athens, Ga., as Second Class Matter, August 31, 1905, under Act of Congress of July 16, 1904.

Issued Monthly by the University

DEPARTMENTS OF PHYSICAL EDUCATION
1933 - 1934

THE UNIVERSITY OF GEORGIA
DEPARTMENTS OF PHYSICAL EDUCATION

Steadman Vincent Sanford, A.B., Litt.D., LLD.
President of The University of Georgia

Herman Jerome Stegeman, Ph.B., M.A.
Associate Professor of Physical Education for Men

Mrs. Mary Ella Lunday Soule, A.B., M.A.
Professor of Physical Education for Women

ANNUAL SESSION

The 133rd annual session of the University of Georgia opens Wednesday, September 27, 1933. Registration of freshmen occurs on September 22 and 23, and of upperclassmen on September 25 and 26.

ENTRANCE REQUIREMENTS

The requirements for entrance are the same as for the other colleges and schools of the University.

Applicants must be of good character, must be graduates of four-year high schools and present 15 units acceptable in this or other states, and must also present a recommendation from the principal of the school. The required entrance units are English (3), History (2), Mathematics (2.5), Foreign Language (2). The remaining units may be chosen from the list of elective subjects.

FEES

The tuition fee is $122.50, payable as follows: Fall quarter $42.50, Winter quarter $40.00, and Spring quarter $40.00. Laboratory fees vary from $2.50 to $7.50 for each quarter. Fees for students not residents of Georgia are $33.33 additional for each quarter. Those who register for the basic courses in Military Science are required to make a deposit of $10.00 for the year. This fee is later returned less deduction for lost equipment and maintenance.

All students in the Coordinate College residents of Georgia, pay, each quarter in advance, a fee of $85.00, which includes room, board, and fees; students not residents of Georgia pay, each quarter in advance, a fee of $118.33.

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DEPARTMENT OF PHYSICAL EDUCATION FOR MEN

The addition of a Department of Physical Education for Men to the cirriculum of the College of Education of the University of Georgia fills a long

felt need and offers additional advantages to students of the University.

The physical equipment of the Athletic Association is adequate for the needs of a well-rounded plant. It comprises a stadium, seating 33,000, a baseball diamond with provision for 4,000 spectators; a freshman field, a track, two playgrounds and six tennis courts; also one large gymnasium with a swimming pool, locker rooms and showers, and a large gymnasium floor devoted entirely to physical education and minor indoor sports; in addition, Woodruff Basketball Auditorium, the largest basketball court in the South, with three standard basketball courts.

The Athletic Association sponsors competitive intercollegiate teams in football, basketball, baseball, track, cross country, boxing, swimming, lacrosse, polo, tennis, rifle, and golf, with freshman teams in all of these sports except polo. This should give all Physical Education students ample opportunity for the practice and observation in any intercollegiate sport recognized in the South.

The program of intramural sports will consist of meets and tournaments in such sports as baseball, playground ball, basketball, volley ball, tennis, golf, swimming, and track and in such other sports as become popular from time to time.

The Athens Country Club has one of the most beautiful golf courses in the state, and this available

to University students at a very nominal daily greens fee, or at reduced fees by the month or season.

The Department of Physical Education for Men offers a well selected series of 16 courses, all conducted by men who are experts in their respective fields. A four-year course leads to the degree of Bachelor of Science in Physical Education. These courses comprise not only the history, theory, and principles of the various fields of Physical Education, but include practical courses in the conduct, management, and instruction of all branches of physical education. A major in physical education should be the best possible preparation for any young man planning to enter into teaching and coaching upon graduation. A combination of courses with courses in Education is offered which meets all of the State requirements for a teaching certificate. Practice Teaching and Practice Coaching classes at the University Practice School and in the University, are available to all Senior College students.

The aim of the Department of Physical Education for Men is to equip graduates who are planning to

teach and coach with a thorough theoretical and practical knowledge of all phases of physical education and athletics. The University in past years has been unable to supply the demand in the State for high school coaches. A major in physical education combined with a teaching major in any subject

should assure any graduate of immediate employment on graduation.

The following courses are offered for the year 1933-1934:

JUNIOR DIVISION COURSES

Physical Education 40. Elementary Physical Education for all freshmen not registered for Military Science. *Jones*

Physical Education 41. Elementary Physical Education for all sophomores not registered for Military Science. *Jones*

Physical Education 42. (Zoology 9) Human Physiology.

Physical Education 43, Individual Hygiene—personal hygiene, habits, posture, mental hygiene, diet. *Jones*

Physical Education 44. Introduction to Physical Education—study of the scope of physical education, study of the aims and theories. *Frost*

Physical Education 45. Methods of Teaching Physical Education—records, statistics—comparative study of best methods of teaching physical education. *Frost*

SENIOR DIVISION COURSES

Physical Education 380. Theory and practice—

Football—offense, defense, training, individual skills, coaching methods, positional instruction. *Mehre*

Physical Education 381. Theory and Practice—Basketball—offense, defense, training, individual skills, tournament playing, coaching methods. *Enright*

Physical Education 382. Theory and Practice—Track and Field—training schedules, individual schedules, photographic explanation of all events—officiating—conduct of meets. *Baskin*

Physical Education 383. Advanced Hygiene and Sanitation—school and community hygiene and sanitation—study of epidemics—recognition of treatment of athletic injuries. *Jones*

Physical Education 384. Playground Management and Community Recreation—study of methods and equipment—study of supervision—location—personnel. *Frost*

Physical Education 385. Safety and Health Methods—Red Cross certification—rescue and resuscitation—safety methods in school and industry. *Jones*

Physical Education 386. History and Theory of Physical Education—study of development of physical education and athletics—explanation of advanced theories. *Stegeman*

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Physical Education 387. Organization and Administration—selection of personnel—development of staff—organization of leagues—intramural organization—competitive theories and practices. *Frost*

Physical Education 388. Advanced Education Methods—study of most advanced methods in operation today—application of these methods to high school and community. *Frost*

Physical Education 389. Theory and Teaching of Corrective Gymnastics—study of corrective methods—time schedules—energy curves—drills in teaching posture and carriage to classes—health drills—study of causes. *Frost*

COURSES IN EDUCATION WITH CREDIT IN PHYSICAL EDUCATION

Education 55. Psychology of Adolescence.

Education 67. History of Education.

Education 81. Methods of Teaching in High School.

Education 111. Extracurricular Activities.

PHYSICAL EDUCATION FOR MEN

This is a four-year course leading to the degree of Bachelor of Science in Education for the purpose of training men as coaches or athletic directors, who will have sufficient Education to satisfy the requirements of the State Department of Education and

will be qualified to give high school instruction in two academic subjects.

CURRICULUM LEADING TO THE DEGREE OF BACHELOR OF SCIENCE IN EDUCATION WITH A MAJOR IN PHYSICAL EDUCATION

—MEN

FRESHMAN

English 1-2	2
Science	2
Zoology 21-22; Chemistry 21-22, or Physics 21-22.	
Mathematics	1
History 1	1
Physical Education 42	1
Physical Education 40, or Military Science	1
Electives	2
Total	10

SOPHOMORE

	Courses
English 3	1
Psychology 1	1
Education 4	1
Social Sciences	1
Physical Education 43	1
Physical Education 44	1
Physical Education 45	1
Physical Education 41, or Military Service	1

Electives	2
Total	10

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JUNIOR

	Courses
Physical Education 50	1
Physical Education 51	1
Physical Education 52	1
Physical Education 53	1
Physical Education 54	1
Education 55	1
Education 67	1
Social Sciences	1
Elective	1
Total	9

SENIOR

	Courses
Education 81	1
Education 111	1
Physical Education 56	1
Physical Education 57	1
Physical Education 58	1
Physical Education 59	1
Education	2
Elective	1
Total	9

DEPARTMENT OF PHYSICAL EDUCATION FOR WOMEN

The Department of Physical Education for Women offers a varied program of activities for students throughout their four years at The University of Georgia. The Physical Education building, with its large gymnasium, stage and dance studio, auxiliary gymnasium, heated swimming pool, airy dressing rooms, adequate showers, physical examination rooms, rifle range, class rooms, games room, Women's Athletic Association club room, and offices, provides ideal facilities for the carrying out of the program. The women's athletic fields include hockey and soccer fields, tennis courts, baseball diamonds, archery range, space for volley ball and badminton courts and a sawdust riding ring. A natural amphitheater affords an ideal place for outdoor performances.

The Women's Athletic Association sponsors the intramural tournaments in the various sports offered for women including hockey, soccer, basketball, volley ball, swimming, baseball, track, riflery, archery, tennis, and horseback riding. Telegraphic meets with other colleges and universities are held in riflery, swimming, and archery. Membership in the Women's Athletic Association may be won by any young woman in the University by active participation in sports. Within the W. A. A. are the Dolphin Club and Dance Club. All girls holding the Senior Red Cross Life Saving badge are eligible for membership in the Dolphin Club, while the Dance Club is an honorary club in the Senior College. The Dance Club sponsors the annual Dance Recital in which

all girls registered for courses in the dance may take part.

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A four-year major course leads to the degree of Bachelor of Science in Physical Education. The program besides providing broad professional training includes courses in the liberal arts, fundamental sciences, and general education, psychology, and methods. The courses in the professional training include: (1) History, theory and principles of various phases of the field, (2) methods of presenting these various activities to attain progressive worthwhile ends, (3) development of skills in the various activities including games and sports, field hockey, basketball, baseball, volley ball, tennis, horseback riding, and riflery, (4) gymnastics—natural, fundamental, and therapeutic, (5) the dance—creative, folk, tap and clog.

The Courses offered include lectures, laboratory periods and the study of special problems in the theory and principles of health and physical education. Every major student must complete a required number of hours of practice teaching in the University practice school and in the University classes under supervision.

The aim of the course is to provide an opportunity for young women interested in Physical Education to secure a liberal education, a basic knowledge of the fundamental sciences and a professional training in physical education. This fits them for more com-

plete living, as well as equipping them for a profession which brings them satisfaction, and in which they may feel that they are doing worthwhile work. Young women may also minor in Physical Education as certain Physical Education courses may be applied toward the requirement of any degree in the University.

CURRICULUM LEADING TO THE DEGREE OF BACHELOR OF SCIENCE IN PHYSICAL EDUCATION—WOMEN

FRESHMAN	Courses
English 1-2	2
Zoology 21-22	2
Psychology 1	1
History	2
Elective	1
Physical Education 5	1
Physical Education 1	1
Total	10

SOPHOMORE	Courses
English 3	1
Educational Psychology 4	1
Foreign Language or elective	2
Chemistry 21-22	2
Elective	1
Physical Education 7, 8	2
Physical Education 2	1
Total	10

JUNIOR

	Courses
Zoology 109	1
Zoology 67	1
Education 55	1
Electives	2
Physical Education 50	1
Physical Education 65	1
Physical Education 69	1
Physical Education 75	1
Total	9

SENIOR

	Courses
Education 80	1
Education 67	1
Electives	2
Physical Education 56	1
Physical Education 71	1
Physical Education 60	1
Physical Education 61	1
Physical Education 76	1
Total	9

Women students specializing in Physical Education will be required to take practice courses in swimming, dancing, gymnastics, sports, or horseback riding each quarter until they pass various achievement tests set up by the Physical Education staff. The credit for this is not to exceed two courses toward the degree. Thirty-eight courses are required for graduation.

All women students majoring in Physical Education are on probation for their first year.

If you wish any additional information or any other bulletin of the University, write the Registrar, The University of Georgia, Athens, Ga.

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EXHIBIT "G"

BULLETIN OF THE UNIVERSITY OF GEORGIA
Volume XXXIII August, 1933 No. 11b–Serial No. 543

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Issued Monthly by the University
PEABODY COLLEGE OF EDUCATION

ANNOUNCEMENT
1933 - 1934

THE UNIVERSITY OF GEORGIA
PEABODY COLLEGE OF EDUCATION

Steadman Vincent Sanford, A.B., Litt.D., LL.D.
President of the University of Georgia

John Cassius Meadows, A.B., A.M., Ph.D.
Dean of the Peabody College of Education

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GENERAL INFORMATION

The Peabody College of Education represents the integration of the Peabody School of Education of the University, the Georgia State Teachers College, and the Department of Rural and Vocational Education of the College of Agriculture. The College of Education is an integral part of the University of Georgia for the professional training of teachers. By action of the Board of Regents the College of Education will hereafter provide and administer all professional courses designed for the preparation of teachers and all other educational workers. Its purpose is to assist the student in the acquirement of the knowledge of the subjects which he wishes to teach, to develop a professional attitude toward education, and to develop skill in the use of special methods in teaching and supervision.

The effort of the College is to bring into proper adjustment within the limits of the four-year courses the academic training, the theoretical professional training, and the practical professional training necessary for effective teaching.

The school is a professional school and ranks as such with the other professional schools of the University.

The organization of the College of Education comprises the following divisions: Undergraduate, Graduate, Research, the Laboratory schools, and Recommendations.

DEPARTMENTS OF INSTRUCTION

The College of Education consists of the following departments:

(1) Education: Administration and Supervision, Educational Psychology, Elementary Education, History and Philosophy of Education, Rural and Vocational Education, Secondary Education, Adult Education.

(2) Physical Education.

DEGREES

The College of Education offers the following degrees:

A. Undergraduate degrees: Bachelor of Arts in Education, Bachelor of Science in Education, and Bachelor of Science in Physical Education.

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B. Graduate degrees: Master of Arts, Master of Science, and Master of Education.

CURRICULA

In providing facilities for the preparation of teachers and other educational workers the needs of the following types of workers are recognized and provided for. Each curriculum is sufficiently flexible to meet the special needs of individual students.

UNDERGRADUATE DIVISION

The undergraduate division provides for the following types of teachers: (1) of Agriculture, (2) of Art, (3) of Elementary School Subjects, (4) of Junior High School Subjects, (5) of High School Subjucts, (6) of Home Economics, (7) of Public School Music, and (8) of Physical Education.

GRADUATE DIVISION

The graduate division provides for the following: (1) Deans of Students and Counselors, (2) Directors of Research, (3) Elementary School Principals, (4) General Supervisors, (5) High School Principals, (6) High School Subject Teachers, (7) Junior High School Principals, (8) School psychologists, (9) School Superintendents, (10) Special Subject Teachers, and (11) Supervisors of Special Subjects.

ADMISSION REQUIREMENTS

Fifteen units, distributed as follows, are the fundamental requirements for regular admission to any college or course in the University, excepting in the College of Agriculture: (1) three units in English, (2) two and one-half in mathematics—one and one-half in algebra, and one in geometry, (3) two in history, and (4) additional units necessary to bring the total to 15 units, with a maximum of four units from Group VI.

THE GRADUATE DIVISION

Graduate work in Education is distinctly professional in character. The purpose of the Division is to secure differentiation from the undergraduate work and to provide the proper stimulus and guidance to graduate students. Graduate work in Education is under the administration and supervision of the University. In addition to this general supervision special direction in the graduate field of Education is rendered by the College of Education. A wide range of graduate courses especially designed for those specializing in the higher levels of Education is offered.

ADVANCED DEGREES

Graduate students in Education may qualify for the degree of Master of Arts, Master of Science, or Master of Education. The minimum residence requirement for the Master of Arts or Master of Science degree is a major of four courses and two

minors of two courses each, of approved graduate credit. The minimum requirement for the Master of Education is a major of eight courses and two minors of four courses each. While residence for a specified time is in no case regarded as sufficient grounds for conferring an advanced degree the Master of Arts and Master of Science degrees contemplate a residence of at least one academic year and the

Master of Education degree contemplates a residence of two academic years. A thesis revealing ability to carry on research projects in the interest of greater school efficiency is required of all graduate students in candidacy for advanced degrees with a major in Education.

BUREAU OF RECOMMENDATIONS

The University of Georgia maintains a Bureau of Recommendations and Appointments in the Division of Publications and Placement for the placement of graduates of the various Colleges of the University. The College of Education cooperates with this Bureau in the placement of teachers. Through this Bureau the College of Education seeks to give all possible assistance to its students and graduates in obtaining positions which they are qualified to fill and to school authorities in securing competent teachers and other educational workers. In order to make this service mutually helpful, information is collected and kept on file concerning both the needs of the school and the qualifications of those available for the positions open. Former students interested in educational work are urged to keep in yearly touch with this Bureau. Students and graduates who desire to avail themselves of this service provided by the University are invited to register. This is accomplished by filling out the required blanks and by the payment of a nominal fee of $1.00.

Correspondence should be addressed to the Director of Publications and Placement, or to the Dean of the College of Education.

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BUREAU OF EDUCATIONAL RESEARCH

This has for its purpose the encouragement and promotion of scientific research in the work of the public schools of Georgia and of the students and faculty of the College of Education. Scientific measurements of the results of education and of individual differences among pupils are encouraged for all schools. Standard scales and tests for measuring the work of the schools may be purchased at cost through the Bureau, and the services of the Director and other faculty members may be had as needed to initiate the testing. Surveys may thus be made of any phase of school efficiency. There will be no service charge except for the actual expenses of the Director and staff members if needed in person for the testing or survey.

Correspondence regarding the purchase of proper standard testing material or other service of this bureau should be addressed to Dr. Paul R. Morrow, Director.

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LABORATORY SCHOOLS

Supervised observation and practice teaching is required of all candidates for a degree in the College of Education. Students preparing to teach in high schools do their practice teaching in one or both teaching fields, (major or minor); students preparing to teach in the elementary schools have

their directed teaching in the particular grades in which they are especially preparing to teach. The practice teaching is articulated with the instruction in general and specific methods to the limit of practical possibility. The observation and practice teaching is under the daily direction of competent experienced teachers.

The College of Education is fortunate in having a system of training schools. These schools are available as laboratories for observation and experimentation, and provide excellent opportunities for the study of educational problems and practices. The classroom instruction in Education is thus combined with the opportunity to observe and participate in the activities of these schools. The laboratory schools include:

The Muscogee Elementary School—a well organized school of six grades.

The Academy—a five-year high school, the work of which is fully recognized and accredited by the State Accrediting Commission and by the Association of Colleges and Secondary Schools of the Southern States.

These schools together with the Junior Division are also laboratory schools for graduate professional courses. This represents one of the first attempts to provide for those attempting to teach on the college level, opportunities for observation and directed student-teaching comparable with the opportunities now so generally provided in the preparation of elementary and high school teachers.

TEACHING MAJORS AND MINORS

RELATED MAJORS AND MINORS

The related majors and minors and names in the order of frequency of their appearance in typical high school teaching assignments.

English—Public Speaking, History, Social Sciences, Latin, French.

History—Social Sciences, English, Mathematics, Biological Science, Physical Science, Public Speaking.

Social Science—History, English, Mathematics, Biological Science, Physical Science, Public Speaking.

Latin—English, French, History, Mathematics.

French—Latin, English, History, Mathematics.

Mathematics—Physical Science, History, Social Sciences, Biological Science.

Physical Science—Biological Science, Mathematics, Social Sciences, History.

Biological Science—Physical Science, Mathematics, Social Science, History.

Home Economics—Biological Science, Physical Science, History.

Physical Education—History, Biological Science, Physical Science, Mathematics.

Only 10 academic majors with their related majors and minors are listed above. Such subjects as

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German and Spanish are not offered as majors or minors because the Georgia market for beginning

teachers does not justify them. It is conceivable that an experienced teacher might desire to take a bachelor's degree from the College of Education with some other related majors and minors. Related majors or minors not listed above may be offered only on approval of the Dean of the College of Education.

ENGLISH MAJOR

	Courses
English 1-2. English Composition	2
English 3. English Literature	1
English 51. Shakespeare	1
English 53. American Literature	1
English 54. Victorian Age	1
English 69, 70. Contemporary Drama	2
The following courses are recommended:	
Journalism 1	1
Public Speaking 1	1

HISTORY MAJOR

History 1. American Government	1
History 2, 3, 4, 5; or 6, 7	2
Additional courses numbered above 50 from fields of European and American history	4

SOCIAL SERVICE MAJORS

History 1. American Government	1
History 2, 3; or 6, 7	2
Additional courses numbered above 50 from fields of European and American History	2
Economics 55. Principles of Economics	1
Sociology 57. Principles of Sociology	1
Geography 51. Principles of Geography	1

LATIN MAJOR

Latin 3-4. Terence, Livy, Horace	2
Latin 5. Cicero, Essays	1
Latin 55. Horace	1
Latin 56. Silver Latin	1
Latin 57. Plautus	1
Latin Elective	1

FRENCH MAJOR

French 3, 4. French Grammar	2
French 5. Modern French Prose	1
French 56. Composition	1
French 57. Phonetics	1
French 60, 61, 62. Survey of French Literature	2

MATHEMATICS MAJOR

Mathematics 1. Trigonometry	1
Mathematics 2. Analytic Geometry	1
Mathematics 3. Calculus	1
Mathematics 112. College Geometry	1
Mathematics 54. College Algebra	1
Mathematics Elective	2

PHYSICAL SCIENCE MAJOR

Physics 21-22. Elementary Physics	2
Physics. Two Senior Division courses	2
Chemistry 21-22. General Chemistry	2
Chemistry 23. Qualitative Analysis	1
Chemistry. One Senior Division Course	1

BIOLOGICAL SCIENCE MAJOR

Botany 21-22. Elementary Botany	2
Botany 70. Taxonomy of Plants	1
Botany 90. Genetics	1
Zoology 21-22. General Zoology	2
Zoology 23. Vertebrate Zoology	1
Zoology 109. Human physiology	1

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BACHELOR OF SCIENCE IN EDUCATION DEGREE REQUIREMENTS FOR HIGH SCHOOL TEACHERS

(Mathematics-Science-Social Sciences)

Upon the satisfactory completion of 38 courses, under the restrictions and requirements prescribed below, the student will be recommended for the degree of Bachelor of Science in Education.

SUGGESTED CURRICULUM

	Courses
English 1-2, 3	3
Mathematics	1
Social Sciences	4
From History 1, 2, 3, 4, 5, 6, 7; Economics 5; Geography 1, 2; Philosophy 4; Political Science 1; Sociology 6, 7. Two courses must be from History.	
Science	3
From Biology, Botany, Chemistry, Physics, or Zoology.	

Psychology 1 1

Physical Education 1-2; or Military Science 1-2 2

Under certain circumstances a student excused by the University Physician may substitute two other courses for this requirement.

Education 7

The following are required:

Education 1. Introduction to Education or Education 7 (67). History of Education.

Education 4. Educational psychology.

Education 80. The High School, or Principles of Secondary Education.

Education 81. Methods of Teaching in High Schools.

Special Methods in the Teaching of the major subject.

Education 86. Observation and Practice Teaching. (Not required of teachers with three or more years of experience).

Not more than 12 courses in Education will be credited toward a degree.

Each candidate for the degree is required to complete a teaching major and a teaching minor, but two teaching majors are recommended. The teaching majors must be chosen from the fields of Mathematics, or the Sciences, or the Social Sciences.

If the major is chosen from the fields of Science or of the Social Sciences, a composite major comprising two or more fields may be offered.

BACHELOR OF SCIENCE IN EDUCATION DEGREE REQUIREMENTS FOR ELEMENTARY SCHOOL TEACHERS

	Courses
English 1-2, 3	3
Social Sciences	4
From History 2, 3; 4, 5; 6, 7.	
Economics 5.	
Geography 1, 2.	
Philosophy 4.	
Political Science 1 (History 1).	
Sociology 6, 7.	
Two courses must be from History and one course from Geography.	
Science. Biology 19-20	2
Psychology 1	1
Public School Music 2, 12	2
Public School Art 14, 15	2
Speech 1	1
	7
Physical Education	2
Under certain circumstances a student excused by the University Physician may substitute two other courses for this requirement.	
Education	7
The following courses are required:	
Education 1. Introduction to Education, or Education 7 (67). Histroy of Education.	
Education 4. Educational Psychology.	

Education 70. Methods of Teaching in the Primary Grades, or Education 71. Methods of Teaching in the Elementary Grades.

Education 153. Psychology of the Elementary School Subjects, or Special Methods in Teaching the Elementary School Subjects.

Education 52. Child Psychology, or Education 75. School and Class Management.

Education 76. Observation and Practice Teaching. (Not required of teachers with three or more years of experience).

Not more than 12 courses in Education will be credited toward a degree.

Thirty-eight courses are required for this degree. In addition to the 24 prescribed courses listed above 14 additional elective courses must be chosen.

A student preparing to teach in the elementary school is not required to complete a teaching major or minor but is required to complete a program of academic subjects designed to prepare for some phase of elementary school work.

BACHELOR OF ART IN EDUCATION

The curricula which lead to the degree of Bachelor of Arts in Education are intended for those whose teaching interests are in the fields of Language and Literature. Upon the satisfactory completion of 38 courses, under the restrictions and requirements pre-

scribed below, the student will be recommended for the degree of Bachelor of Arts in Education.

REQUIREMENTS FOR A DEGREE

	Courses
English 1-2, 3	3
Mathematics 1	1
Social Sciences	4
Four courses from History 1; 2, 3; 4, 5; 6, 7; Economics 5; Geography 1, 2; Philosophy 4; Political Science 1; Sociology 5, 7. Two courses must be from History.	
Science	3
From Biology, Botany, Chemistry, Physics, or Zoology.	
Psychology 1	1
Foreign Language	
Four courses in high school and college taken together.	
Physical Education 1-2, or Military Science 1-2	2
Under certain circumstances a student excused by the University Physician may substitute two other courses for this requirement.	
Education	7
The following courses are required:	
Education 1. Introduction to Education, or Education 7 (67). History of Education:	
Education 4. Educational Psychology.	
Education 80. The High School, or Principles of Secondary Education.	
Education 81. Methods of Teaching in High School.	

Special Methods in the Teaching of major subjects.

Education 86. Observation and Practice Teaching. (Not required of teachers of three or more years of experience.)

Not more than 12 courses in Education will be credited toward a degree.

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Each candidate for the degree is required to complete a teaching major and a teaching minor, but two teaching majors are recommended. The teaching majors must be chosen from English, Latin, French, German, and Spanish, or the Social Sciences.

CURRICULUM LEADING TO THE DEGREE OF BACHELOR OF SCIENCE IN EDUCATION WITH A MAJOR IN AGRICULTURE

FRESHMAN

	Courses
English 1	1
Chemistry 21-22	2
Psychology 1	1
Forestry 2	1
Economics 3	1
Botany	1
History 1 or 4	1
Farm Management 2	1
Military Science 1	1
Total	10

SOPHOMORE

	Courses
English 2	1
Physics 21-22	2
Animal Husbandry 3	1
Soils 10	1
Botany	1
Agricultural Chemistry 1	1
Agricultural Engineering 13	1
Education 29	1
Military Science 2	1
Total	10

JUNIOR

	Courses
Educational Psychology 54	1
Education 91	1
Education 129	1
Farm Management 51	1
Poultry 60	1
Farm Crops 50	1
Horticulture 55. Entomology	1
Horticulture 61	1
Electives	1
Total	9

SENIOR

	Courses
Education 92	1
Education 93	2
Education 192	1
Bacteriology 50	1

Animal Husbandry 73	1
Plant Pathology 55. Genetics	1
Electives	2
Total	9

CURRICULUM LEADING TO THE DEGREE OF BACHELOR OF SCIENCE IN EDUCATION WITH A MAJOR IN HOME ECONOMICS

FRESHMAN

	Courses
English 2	1
Chemistry 21-22	2
Clothing 20, 21	2
Psychology 4	1
History 1	1
Art 1	1
Psychology 1	1
Physical Education	1
Total	10

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SOPHOMORE

	Courses
English 3	1
Organic Chemistry	1
Education 4. Educational Psychology	1
Cookery, 5, 6	2
Sociology	1
Economics	1

Physical Education	1
Electives	2
Total	10

JUNIOR

	Courses
Nutrition 52	1
Dietetics 53	1
Psychology of Adolescence 55	1
Education 81. Home Ecomonics Applications	1
Education 84. Special Methods in Home Economics	1
Advanced Foods 50	1
Advanced Clothing 60	1
Textile Economics 61	1
Electives	1
Total	9

SENIOR

	Courses
Education 52. Psychology of Childhood	1
Education 86. Teaching Home Economics	1
Home Management 70	1
Family Relationships 93	1
Home Furnishing	1
Electives	4
Household Mechanics, Sociology, Economics, English, Language, Journalism, Agriculture, Art.	
Total	9

PHYSICAL EDUCATION FOR MEN

This is a four-year course leading to the degree of Bachelor of Science in Education for the purpose of training men as coaches or athletic directors, who will have sufficient Education to satisfy the requirements of the State Department of Education and will be qualified to give high school instruction in two academic subjects.

CURRICULUM LEADING TO THE DEGREE OF BACHELOR OF SCIENCE IN EDUCATION WITH A MAJOR IN PHYSICAL EDUCATION

—MEN

FRESHMAN

	Courses
English 1, 2	2
Science	2
Zoology 21-22; Chemistry 21-22, or Physics 21-22.	
Mathematics	1
History 1	1
Physical Education 42	1
Physical Education 40, or Military Science	1
Electives	2
Total	10

SOPHOMORE

	Courses
English 3	1
Psychology 1	1

Education 4	1
Social Sciences	1

10

Physical Education 43	1
Physical Education 44	1
Physical Education 45	1
Physical Education 41, or Military Science	1
Electives	2
Total	10

JUNIOR

	Courses
Physical Education 50	1
Physical Education 51	1
Physical Education 52	1
Physical Education 53	1
Physical Education 54	1
Education 55	1
Education 67	1
Social Sciences	1
Elective	1
Total	9

SENIOR

	Courses
Education 81	1
Education 111	1
Physical Education 56	1
Physical Education 57	1

Physical Education 58	1
Physical Education 59	1
Education	2
Elective	1
Total	9

CURRICULUM LEADING TO THE DEGREE OF BACHELOR OF SCIENCE IN PHYSICAL EDUCATION—WOMEN

FRESHMAN

	Courses
English 1-2	2
Zoology 21-22	2
Psychology 1	1
History	2
Elective	1
Physical Education 5	1
Physical Education 1	1
Total	10

SOPHOMORE

	Courses
English 3	1
Educational Psychology 4	1
Foreign Language or elective	2
Chemistry 21-22	2
Elective	1
Physical Education 7, 8	2
Physical Education 2	1
Total	10

JUNIOR

	Courses
Zoology 109	1
Zoology 67	1
Education 55	1
Electives	2
Physical Education 50	1
Physical Education 65	1
Physical Education 69	1
Physical Education 75	1
Total	9

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SENIOR

	Courses
Education 80	1
Education 67	1
Electives	2
Physical Education 56	1
Physical Education 71	1
Physical Education 60	1
Physical Education 61	1
Physical Education 76	1
Total	9

Women students specializing in Physical Education will be required to take practice courses in swimming, dancing, gymnastics, sports, or horseback riding each quarter until they pass various achievement tests set up by the Physical Education staff.

The credit for this is not to exceed two courses toward the degree. Thirty-eight courses are required for graduation.

All women students majoring in Physical Education are on probation for their first year.

CURRICULUM LEADING TO THE DEGREE OF BACHELOR OF SCIENCE IN EDUCATION WITH A MAJOR IN PUBLIC SCHOOL MUSIC

FRESHMAN

	Courses
English 1-2 or 3	2
Mathematics 1	1
History 1	1
Physics 21-22	2
Psychology 1	1
Music 2	1
Physical Education	1
Elective	1
Total	10

SOPHOMORE

	Courses
English, Public Speaking	1
History 3	1
Foreign Language	2
Education 1	1
Education 4	1
Music 4	1
Music 12	1
Physical Education	1

Elective	1
Total	10

JUNIOR

	Courses
Art 1	1
Sociology 6	1
Education 52	1
Education 55	1
Education 79	1
Music 63	1
Music 64	½
Electives	2½
Total	9

SENIOR

	Courses
Sociology 57	1
Education 80	1
Education 81	1
Education 76 or 86	1
Music 61	1
Music 52	1
Music 54	1
Electives	2
Total	9

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CURRICULUM LEADING TO THE DEGREE OF BACHELOR OF SCIENCE IN EDUCATION WITH A MAJOR IN ART

FRESHMAN

	Courses
English 1-2	2
Mathematics 1	1
History 1	1
Physics 21-22	2
Psychology 1	1
Art 1	1
Physical Education	1
Elective	1
Total	10

SOPHOMORE

	Courses
English 3	1
Foreign Language	2
History 3	1
Education 1	1
Education 4	1
Art 14	1
Art 15	1
Physical Education	1
Elective	1
Total	10

JUNIOR

	Courses
Music 52 or 54	1
Sociology 6	1

Education 52	1
Education 55	1
Education 79	1
Art 70	1
Art 81	1
Electives	2
Total	9

SENIOR

	Courses
Education 80	1
Sociology 57	1
Education 81	1
Education 76 or 86	1
Art 90 or 91	1
Art 51	1
Art 67	1
Electives	2
Total	9

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EDUCATION

A. ADMINISTRATION AND SUPERVISION

90. School Administration ..... Mr. Pusey
104. Educational Administration, State and County [Not offered 1933-34] ..... Mr. Pusey
108. Supervision of Elementary Instruction ..... Mr. Pusey
204. Educational Administration, City ..... Mr. Pusey
205. Public School Business Administration ..... Mr. Pusey

B. EDUCATIONAL PSYCHOLOGY

4. Educational Psychology ..... Mr. Greene and Mr. Mallary
52. Psychology of Childhood ..... Mr. Greene
54. Educational Psychology ..... Mr. Greene
55. Psychology of Adolescence ..... Mr. Morrow
56. Educational Tests and Measurements ..... Mr. Ritchie
102. Advanced Educational Psychology [Not offered 1933-34] ..... Mr. Greene
109. Educational Diagnosis and Treatment of Exceptional Children [Not offered 1933-34] ..... Mr. Greene
110. Principles and Methods of Teaching the Mentally Defective, the Gifted, and Problem Children ..... Mr. Greene
115. Statistical Methods in Education ..... Mr. Morrow
119. Educational Hygiene ..... Mr. Greene
153. The Psychology of Elementary School Subjects ..... Mr. Morrow
158. The Measurement of Intelligence [Not offered 1933-34] ..... Mr. Morrow
211. Problems in Educational Psychology [Not offered 1933-34] ..... Mr. Greene
216. Educational Research [Not offered 1933-34] ..... Mr. Morrow
217. Problems in Educational Statistics [Not offered 1933-34] ..... Mr. Morrow

C. ELEMENTARY EDUCATION

70. Methods of Teaching in the Primary Grades ..... Miss Young
71. Methods of Teaching in the Elementary Grades ..... Mr. Pusey
74-1. Special Methods in Teaching English in the Elementary Grades ..... Miss Young
74-2 Special Methods in Teaching Reading ..... Miss Young
74-3. Special Methods in Teaching Arithmetic in the Elementary Grades ..... Miss Callaway

74-6. Special Methods in Teaching Science in the Elementary Grades.....Mr. Earnest
75. School and Class Management.....Mr. Ritchie
76. Observation and Practice Teaching.....Supervising Teachers
77. Teaching Childrens' Literature.....Miss Vance
78. Visual Aids in Education [Not offered 1933-34].....Mr. Earnest
79. Curriculum Construction in Elementary Grades.....Mr. Pusey

D. HISTORY AND PHILOSOPHY OF EDUCATION

1. Introduction to Education.....Mr. Ritchie
7. History of Education.....Mr. Mallary
62. Character of Education.....Mr. Mallary
67. History of Education.....Mr. Meadows and Mr. Mallary

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68. History of American Education.....Mr. Mallary
69. Educational Sociology.....Mr. Mallary
100. History of Education [Not offered 1933-34].....Mr. Meadows
103. The Philosophy of Education.....Mr. Meadows

E. RURAL AND VOCATIONAL EDUCATION

29. Introduction to Vocational Education.....Mr. Wheeler
91. Methods of Teaching High School Agriculture.....Mr. Aderhold
92. Adult Education in Vocational Agriculture.....Mr. Aderhold
93. Apprenticeship Teaching Practice.....Mr. Aderhold
94. Rural Education.....Mr. Wheeler
95. Supervised Teaching.....Mr. Aderhold
129. History of Vocational Education.....Mr. Wheeler
191. Special Problems in Teaching Vocational Agriculture.....Mr. Aderhold

192. Projects in Teaching Vocational Agriculture ..... Mr. Aderhold
193. Rural School Administration ..... Mr. Wheeler
194. Rural Secondary School Administration ..... Mr. Wheeler
197. Principles of Rural Education ..... Mr. Aderhold
203. Problems of College Teaching ..... Mr. Wheeler
204. The Supervision of Vocational Education in Agriculture ..... Mr. Wheeler
81-1. Foundation Methods in Home Economics ..... Miss Proctor
84-9. Special Methods in Teaching Home Economics in High School ..... Miss Proctor
86. Observation and Practice Teaching in Home Economics ..... Miss Proctor and Miss Baker
181. Problems in Home Economics Education ..... Miss Proctor
281. Teaching Home Economics in High School ..... Miss Proctor

F. SECONDARY EDUCATION

80. The High School ..... Mr. Meadows
81. Methods of Teaching in High School ..... Mr. Morrow
84-1. Materials and Methods in Teaching English in the High School ..... Mr. Brown
84-2. Materials and Methods in Teaching History in the High School ..... Mr. Payne
84-3. Material and Methods in Teaching Junior and Senior High School Mathematics ..... Miss Callaway
84-5. Special Methods in Teaching Modern Foreign Languages ..... Mr. Chance and Miss Brumby
84-6. Content and Methods in Junior and Senior High School Science ..... Mr. Morrow
84-7. Special Methods in Teaching High School Latin [Not offered 1933-34] ..... Mr. Hooper
86. Observation and Practice Teaching ..... Supervising Teachers

106. The High School Curriculum.....Mr. Morrow
111. Extra-Curricular Activities.....Mr. Mallary
117. Problems in Educational Methods.....Mr. Meadows
120. The High School Principal [Not offered 1933-34].....Mr. Meadows
150. The Junior College [Not offered 1933-34].....Mr. Meadows
182. The Junior High School.....Mr. Morrow
183. Educational and Vocational Guidance ....Mr. Wheeler

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PHYSICAL EDUCATION—MEN

40. Physical Education.....
41. Physical Education.....
42. Physical Education [Zoology 9, Human Physiology].....Mr. Boyd
43. Individual Hygiene.....Mr. Jones
44. Introduction to Physical Education.....
45. Methods of Teaching Physical Education in High Schools.....
80. Theory and Practice of Physical Education.....Mr. Mehre
81. Theory and Practice of Physical Education.....Mr. Enright
82. Theory and Practice of Physical Education.....Mr. Baskin
83. Advanced Hygiene and Sanitation.....Dr. Reynolds
84. Playground Management and Community Recreation.....
85. Safety and Health Methods.....Mr. Jones
86. History and Theory of Physical Education.....
87. Organization and Administration.....Mr. Stegeman
88. Physical Education Methods.....
89. Theory and Teaching of Corrective Gymnastics.....

PHYSICAL EDUCATION—WOMEN

1.	Physical Education	Staff
2.	Physical Education	Staff
4.	Horsemanship	Capt. Godbold
5.	Introduction to Physical Education	Mrs. Soule
7.	Nature and Function of Play	Miss MacNaught
8.	Leadership	Miss MacNaught
10.	The Dance	Miss Morse
15a.	Swimming [Elementary Swimming]	Miss MacNaught
15b.	Swimming [Advanced Swimming]	Miss MacNaught
50.	Sports	Miss MacNaught
55a.	The Dance	Miss Morse
55b.	The Dance	Miss Morse
56.	Theory of the Dance	Miss Morse
60.	Kinesiology	Miss MacNaught
61.	Theraputic Gymnastics	Miss MacNaught
62.	Advanced Theraputic Gymnastics	Miss MacNaught
65.	Personal and Community Hygiene	Mrs. Soule
69.	Technique of Teaching Physical Education	Miss Morse
70.	Directed Teaching	Mrs. Soule
75.	Principles, Philosophy and History of Physical Education	
76.	Organization and Administration of Health and Physical Educations	Mrs. Soule
200.	Seminar in Physical Education	Mrs. Soule

If you wish any additional information or any other bulletin of the University write the Registrar, The University of Georgia, Athens, Ga.

TITLE OMITTED.

MOTION TO DISMISS

TO THE HONORABLE, THE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

Comes now W. E. Page, Collector of Internal Revenue, defendant in the above entitled cause, by Lawrence S. Camp, United States Attorney in and for the Northern District of Georgia, and M. Neil Andrews, Assistant United States Attorney for said District, his attorneys, and moves the Court to dismiss the Bill of Complaint filed herein, with costs to be paid by the complainant, upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of the taxes herein involved, because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any court of a suit for the purpose of restraining the assessment and collection of a Federal tax.

2. The Bill of Complaint sets forth no facts which, if true, would entitle complainant to the relief prayed for in a court of equity.

3. Complainant has a plain, adequate and complete remedy in the ordinary course of law.

4. Complainant is not the real party in interest, in that it affirmatively appears from the Bill of Complaint that the funds in controversy are the amounts collected by Georgia Tech Athletic Association and University of Georgia Athletic Association, respectfully, as and for the tax on admissions to their respective athletic events, and not the property of complainant, and that complainant has no materail interest in the outcome of this suit.

II.

That the United States of America is the real party in interest which may not be sued without its consent.

III.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act.

IV.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief. This proceeding is not authorized

by the provisions of said Act and cannot be maintained.

Dated this 15 day of December, 1934.

LAWRENCE S. CAMP,
United States Attorney.

M. NEIL ANDREWS,
Assistant United States Attorney.

M. H. EUSTACE
Special Assistant to the Attorney General.

Filed December 15, 1934.

TITLE OMITTED.

AMENDMENT TO MOTION TO DISMISS.

Now comes the defendant, subsequent to the filing of the amendment to complainant's petition on January 11, 1935, and being cognizant of the matters and things in said amendment alleged, renews his motion to dismiss, filed in said cause on December 15, 1934, and re-tenders the same to the Court and specifically urges each and every ground in said motion contained, as against the complainant's said amend-

ment, and moves the Court to dismiss the bill of complaint with said amendment as filed herein.

LAWRENCE S. CAMP,

M. NEIL ANDREWS,

ATTORNEYS FOR THE DEFENDANT

ALLOWED, subject to demurrer.

This 24 day of January, 1935.

E. MARVIN UNDERWOOD,
United States Judge.

Filed Jan. 24, 1935.

TITLE OMITTED.

MOTION TO STRIKE AMENDMENT TO BILL.

Now comes the defendant, W. E. Page, Collector of Internal Revenue for the Northern District of Georgia, and moves the Court:

1.

To strike the following paragraphs of plaintiff's amendment to complainant's petition filed on the 11th day of January, 1935, to wit, paragraphs 32, 33, 34 and 35, for the reason that the allegations in

each of said paragraphs are sham, frivolous, irrelevant, immaterial and redundant, constitute conclusions of the pleader, and do not tender an issue.

2.

To strike the allegations, both separately and as a whole, of the entire amendment to complainant's petition filed on said January 11, 1935, for the reason that the matter therein alleged is sham, frivolous, irrelevant, immaterial and redundant, constitute conclusions of the pleader, and do not tender an issue.

LAWRENCE S. CAMP,

M. NEIL ANDREWS,

ATTORNEYS FOR THE DEFENDANT.

Filed Jan. 24, 1935.

TITLE OMITTED.

ANSWER TO BILL OF COMPLAINT AND RETURN TO RULE NISI.

Comes now W. E. Page, Collector of Internal Revenue, defendant in the above entitled cause, by Lawrence S. Camp, United States Attorney in and for the Northern District of Georgia, and M. Neil Andrews, Assistant United States Attorney for said District, his attorneys, and without waiving any of his rights

and defenses under the motion heretofore filed in his behalf to dismiss the bill of complaint and amendments thereto, but expressly relying upon the same, as if the grounds of said motion were repeated herein, reserving unto himself all manner of exceptions to the errors and insufficiencies of the bill and the amendments thereto filed herein and to the jurisdiction of the Court in the premises, nevertheless, answering so much and such parts of the bill of complaint and the amendments thereto herein as he is advised it is material for him to make answer unto, says:

1.

For answer to the first paragraph of the bill, defendant denies that complainant is a department of the state government of Georgia, but on the contrary, avers that complainant, Regents of the University System of Georgia, is an eleemosynary corporate entity, created, existing and operating under and by virtue of and pursuant to the laws of the State of Georgia, more particularly under Article 6, Title I, Part I of an Act of the General Assembly of Georgia entitled "An Act to simplify the operations of the Executive Branch of the State Government by abolishing certain offices, boards, departments, commissions, and institutions; creating others; redistributing the powers, duties, and functions of said Executive Branch among such offices, boards, commissions, and departments as are herein created or hereby retained; defining such powers, duties, and functions and co-ordinating the same; fixing salaries, terms of office, method of appointment and election, duties and qualifications of the personnel in charge thereof;

repealing all laws and parts of laws in conflict herewith; and for other purposes", approved August 28, 1931 (Georgia Laws 1931, pp. 20-31), and that said complainant, since the date of its creation and organization, has continuously maintained, and now maintains its principal office and place of business at Atlanta, Fulton County, Georgia, and in the Northern District of said State of Georgia.

2.

Defendant admits the averments of the second paragraph of the bill.

3.

Defendant denies that this suit involves a controversy between a department of the State of Georgia, or any branch or subdivision thereof, and/or the Collector of Internal Revenue of the said District of Georgia.

Further answering the third paragraph of the bill, defendant affirmatively avers that this is a suit of a civil nature arising under the Constitution and laws of the United States relating to internal revenue, and that the maintenance of the suit is expressly forbidden by the provisions of Section 3224 of the Revised Statutes, and that the defendant, in doing the acts complained of, was doing so in his official capacity as Collector of Internal Revenue, by direction and authority of the Commissioner of Internal Revenue, pursuant to the internal revenue laws of the United States of America, and all of the acts of defendant

herein, in connection with the matters alleged and charged in the bill, were committed by him under color of his said office.

4.

Defendant admits the averments of the fourth paragraph of the bill.

5.

For answer to the fifth paragraph of the bill, defendant says that he is without knowledge with respect to the averments therein contained.

Further answering the fifth paragraph of the bill, defendant affirmatively avers that under said Act of the General Assembly of Georgia of 1931, it is provided that the University System of Georgia shall consist of the University of Georgia and all its branches, consisting among others of the School of Technology located in Atlanta, Georgia; that during the time mentioned in the bill of complaint, there was maintained at said School of Technology a certain association of students and alumni known and designated as the Georgia Tech Athletic Association, which functioned through a governing board composed of an equal number of faculty members and alumni of said School of Technology; that said Georgia Tech Athletic Association was incorporated under and pursuant to the laws of Georgia on or about March 8, 1934, and ever since said date has been and now is a corporation; that during the months of September and October, 1934, and prior thereto, said Georgia

Tech Athletic Association promoted and had control of the athletic games and events in which teams composed of athletes who were students of said School of Technology competed with teams composed of athletes who were students of other schools or colleges, to which spectators were admitted upon the payment of a certain admission charge of varying amounts.

Further answering the fifth paragraph of the bill, defendant further avers that during the times alleged in the bill, there was maintained at the University of Georgia located at Athens, Georgia, a certain association of students and alumni known and designated as University of Georgia Athletic Association, which, defendant is informed, believes and, therefore, avers, functions through a governing board composed of an equal number of faculty members and alumni of said University of Georgia; that defendant is informed and, therefore, avers that said University of Georgia Athletic Association is a corporation organized and existing under and by virtue of the laws of the State of Georgia; that during the months of September and October, 1934, and prior thereto, said University of Georgia Athletic Association promoted and had control of the athletic games and events in which teams composed of athletes who were students of said University of Georgia competed with teams composed of athletes who were students of other schools or colleges, to which spectators were admitted upon the payment of a certain admission charge of varying amounts.

6.

For answer to the sixth paragraph of the bill, defendant says that he is without knowledge with respect to the averments therein contained.

Further answering the sixth paragraph of the bill, defendant is advised and therefore avers that the athletic games and contests to which admissions were charged, the collection of the tax upon which is sought to be enjoined in this suit, are not and were not an integral or any part of the educational activities of either the University of Georgia or of the School of Technology, but that the conducting of such athletic games was and is primarily for revenue purposes.

7.

For answer to the seventh paragraph of the bill, defendant says that he is without knowledge with respect to the averments therein contained.

Further answering the seventh paragraph of the bill, defendant is advised and therefore avers that neither the physical training nor education incident to the athletic contests for which admissions are charged are a part of the curricula activities of either the University of Georgia or of the School of Technology, and that participation by students in attendance at such institutions in such athletic events to which admissions are charged is not a requirement for any degree conferred by either of said institutions.

Defendant denies the averments of the eighth paragraph of the bill and the whole thereof.

Further answering the eighth paragraph of the bill, defendant affirmatively avers that during the time alleged in the bill of complaint, athletic games and contests were held or played in and upon an athletic stadium situated upon the grounds or campus of said School of Technology to which the general public was admitted as spectators upon payment of admission charges usually evidenced by tickets, which admission charges were collected and sold by said Georgia Tech Athletic Association, acting through one Dr. A. H. Armstrong; that during the months of September and October, 1934, such games or contests were held in said stadium, and the funds derived from the collection of admissions or from the sale of tickets to such games and athletic events were collected and held by said Georgia Tech Athletic Association; that tickets sold by said Georgia Tech Athletic Association to spectators and used by them in gaining admission to said stadium to witness said games or contests had printed on the front or face thereof the words "Admission Price....." (with the amount stated in accordance with the location of the seat to be occupied by the spectator), "Government Tax....." (with the percentage of the admission price due as tax stated), and "Total....." (being the total of Admission and Tax); that printed or stamped on the reverse side of each of such tickets, there appeared the following statement:

Georgia School of Technology, being an instrumentality of the government of the State of Georgia, contends that it is not liable for any admission tax. The amount collected as a tax as shown on the opposite side of this ticket will therefore be retained by Georgia School of Technology as a part of the admission unless it is finally decided that it is liable for the tax:

that neither the complainant, the Georgia School of Technology, nor said Georgia Tech Athletic Association nor any other person made any returns of taxes so collected, and required by law to be so collected, to the defendant as Collector of Internal Revenue under Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, but, as defendant is informed, believes and, therefore, avers, the Said Georgia Tech Athletic Association kept the amounts so collected as tax separate and apart from all other funds of said Association and deposited the same to the credit of said Association in the First National Bank of Atlanta, Georgia; that the amount so collected as tax by the said Georgia Tech Athletic Association during the months of September and October, 1934, was $3,914.63, no part of which has been paid.

Further answering the eighth paragraph of the bill, defendant affirmatively avers that upon the failure of said Georgia Tech Athletic Association or the said Dr. A. H. Armstrong to make the returns and pay the tax on said admissions, the defendant as Collector of Internal Revenue made returns for said Georgia Tech Athletic Association of admissions tax due and owing by it for the months of September and October,

1934, showing admissions taxes due and owing thereon amounting to $3,914.63; that defendant demanded of said Georgia Tech Athletic Association and of said Dr. A. H. Armstrong the payment of the tax shown to be due and owing thereon.

Further answering the eighth paragraph of the bill, defendant affirmatively avers that during the time alleged in the bill of complaint, athletic games and contests were held or played in and upon an athletic field or stadium situated upon the grounds or campus of Said University of Georgia, and the general public was admitted as spectators upon payment of admissions charges usually evidenced by tickets, which admissions charges were collected and sold by said University of Georgia Athletic Association acting through one Charles E. Martin; that during the months of September and October, 1934, such games or contests were held in said stadium, and the funds derived from the collection of admissions or from the sale of tickets to such games and athletic events were collected and held by said University of Georgia Athletic Association to spectators and used by them in gaining admission to said stadium to witness said games or contests had printed on the front or face thereof the words "Est'd Price....." (with the amount stated in accordance with the location of the seat to be occupied by the spectator), "Tax....." (with the percentage of the admission price due as tax stated), and "Total....." (being the total of Admission and Tax); that printed or stamped on the front of such tickets, there appeared the following statement:

The University of Ga., being an instrumentality of the government of the State of Ga.,

contends that it is not liable for any admission tax. The amount collected as a tax, as shown on the face of this ticket, will therefore, be retained by the University as part of the admission unless it is finally determined that the University is liable for the tax;

that neither the complainant, the University of Georgia, nor the University of Georgia Athletic Association made any returns of taxes so collected and required by law to be so collected, to the defendant as Collector of Internal Revenue under Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, but, as defendant is informed, believes and, therefore, avers, the said University of Georgia Athletic Association kept the amounts so collected as tax separate and apart from all other funds of said Association and deposited the same to the credit of the Association in the Citizens and Southern National Bank in Athens, Georgia; that the amount so collected as tax by the said University of Georgia Athletic Association during the months of September and October, 1934, was $895.37, no part of which has been paid.

Further answering the eighth paragraph of the bill, defendant affirmatively avers that upon the failure of said University of Georgia Athletic Association or the said Charles E. Martin to make the returns and pay the tax on said admissions, the defendant as Collector of Internal Revenue made returns for said University of Georgia Athletic Association of admissions tax due and owing by it for the months of September and October, 1934, showing admissions taxes due and owing thereon amounting to $895.37; that

defendant demanded of said University of Georgia Athletic Association and of said Charles E. Martin the payment of the tax shown to be due and owing thereon.

Further answering the eighth paragraph of the bill, defendant avers that the complainant herein is not a department of the state government of Georgia, nor are the complainant, the University of Georgia, the University of Georgia Athletic Association, Charles E. Martin, the Georgia School of Technology, the Georgia Tech Athletic Association, nor Dr. A. H. Armstrong, nor either or any of them, in the promoting, sponsoring, and/or holding of intercollegiate athletic contests between teams composed of students of the University of Georgia and/or of the Georgia School of Technology and teams composed of students of other colleges and universities, or between teams composed of their own students, respectively, to which the public is admitted upon the payment of an admission charge and for which an admission charge is made, governmental agencies engaged in carrying out an essential governmental function, and no part of the funds involved in this proceeding is the property of complainant or subject to its use for any purpose whatsoever.

9.

For answer to the ninth paragraph of the bill, defendant admits that on or about the 24th day of October, 1934, defendant through a duly authorized Deputy Collector of Internal Revenue served upon one Charles E. Martin, as an officer of the said University

of Georgia Athletic Association, a warrant for distraint, demanding payment from said University of Georgia Athletic Association in the sum of $895.37, being the amount of said admissions taxes due and owing to the United States for the months of September and October, 1934. Defendant admits that there is attached to the bill of complaint, marked Exhibit "A", a copy of said warrant for distraint. Defendant further admits that on the same date he caused to be served upon the said Charles E. Martin a notice of lien on account of such taxes, and avers that notice of such lien on account of such taxes was duly filed on or about said date in the office of the Clerk of the District Court of the United States for the Northern District of Georgia. Defendant admits that there is attached to the bill of complaint, marked Exhibit "B", a copy of said notice of lien. Defendant further admits that on or about said date, he caused to be served on said Charles E. Martin two notices and demands for tax demanding payment from said Charles E. Martin or from said University of Georgia Athletic Association the sum of $895.37 for admissions taxes due on account of admissions collected by said Association during the months of September and October, 1934. Defendant admits that there is attached to the bill of complaint, marked Exhibit "C" and "D", copies of said two demands. All other averments in said paragraph 9 of the bill not herein specifically admitted or qualified are denied.

Further answering the ninth paragraph of the bill, defendant affirmatively avers that on or about the 24th day of October, 1934, he served upon the said

Charles E. Martin and upon the said University of Georgia Athletic Association a warrant for distraint and levied upon the said sum of money which had theretofore been deposited by the said University of Georgia Athletic Association in the Citizens and Southern National Bank of Athens, Georgia, and demanded the payment and delivery to said defendant as Collector of Internal Revenue the said sum of $895.37 admissions tax, and that said bank failed and refused to deliver said sum or any part thereof to the defendant although said bank admitted that it had on deposit to the credit of "Charles Martin, Trustee" the sum of $1,119.71, which defendant avers upon information and belief, is the account in which was deposited the admissions taxes herein involved collected by said Charles E. Martin or said University of Georgia Athletic Association for the months of September and October, 1934.

10.

For answer to the tenth paragraph of the bill, defendant admits that on or about the 25th day of October, 1934, defendant through a duly authorized Deputy Collector of Internal Revenue served upon the Trust Company of Georgia in Atlanta, Georgia, and the Citizens and Southern National Bank in Athens, Georgia, a warrant for distraint and notice of levy, demanding the payment and delivery to said defendant as Collector of Internal Revenue the sum of $895.37, and levying upon accounts in said banks standing in the names of "University of Georgia, Department of Athletics" and "Charles Martin, Trustee", respectively, which defendant is informed and

believes and, therefore, avers were the accounts in which were deposited the proceeds of collections made by the said Charles E. Martin or the said University of Georgia Athletic Association of the admissions taxes herein involved. Defendant admits that there is attached to the bill of complaint, marked Exhibit "E", a copy of said notice of levy. Defendant denies all the remaining averments in said paragraph contained.

11.

For answer to the eleventh paragraph of the bill, defendant avers that he is without knowledge as to whether there is "no such entity as University of Georgia, Department of Athletics". Defendant denies that said or any accounts so levied upon, being so styled and/or carried for convenience only, were the sole and/or exclusive or any property of complainant, and on the contrary avers that no part of said accounts so levied upon by defendant was the property of complainant, and that complainant has no right, title or interest therein whatsoever.

12.

For answer to the twelfth paragraph of the bill, defendant admits that on or about the 25th day of October, 1934, defendant through a duly authorized Deputy Collector of Internal Revenue served upon one Dr. A. H. Armstrong, as an officer of the said Georgia Tech Athletic Association, and upon the First National Bank of Atlanta, a warrant for distraint, demanding payment from said Dr. A. H.

mstrong and from said Georgia Tech Athletic sociation of the sum of $3,914.63 admissions taxes, ing the amount of said admissions taxes due and ing to the United States for the months of Sep- nber and October, 1934, and levying upon an ac- unt in said bank standing in the name of said Georgia ch Athletic Association. Defendant denies all the maining allegations in said paragraph contained.

Further answering the twelfth paragraph of the bill, fendant affirmatively avers that on the 25th day October, 1934, he caused to be served on said Dr. H. Armstrong and upon said Georgia Tech Athletic sociation a warrant for distraint and levied upon e said sum of money which had theretofore been posited by the said Georgia Tech Athletic Asso- tion in the First National Bank of Atlanta, Georgia, d demanded payment and delivery to said defendant Collector of Internal Revenue the said sum of ,914.63 admissions tax, and that said bank failed d refused to deliver said sum of $3,914.63 or any rt thereof to the defendant, although said bank mitted that it had on deposit to the credit of said eorgia Tech Athletic Association the sum of $3,- 4.63, which defendant avers upon information and lief is the account in which was deposited the ad- ssions taxes herein involved collected by said Geor- a Tech Athletic Association for the months of Sep- nber and October, 1934.

13.

For answer to the thirteenth paragraph of the bill, fendant admits that the said warrants for distraint

cover admissions tax which defendant is attempting to collect from said University of Georgia Athletic Association and from said Georgia Tech Athletic Association, respectively, on account of the sums paid to them, respectively, as admissions to their said intercollegiate athletic contests. Defendant denies, however, that he is attempting to collect any taxes whatsoever from the State of Georgia or from any branch of the government of said State. Defendant further denies all of the remaining averments in said paragraph contained not herein specifically admitted, explained, or qualified.

Further answering the thirteenth paragraph of the bill, defendant is informed and believes and, therefore, affirmatively avers that only $3,914.63 was collected by said Dr. A. H. Armstrong or the said Georgia Tech Athletic Association as tax from the spectators of athletic games or contests during the said months of September and October, 1934; that no returns of taxes due and payable for said months were voluntarily filed by said Dr. A. H. Armstrong or by said Georgia Tech Athletic Association with the Collector of Internal Revenue; that the amount due and owing and collected by said Association as admissions tax as aforesaid was ascertained by representatives of said defendant upon investigation of the records of said Georgia Tech Athletic Association by and with its consent; that returns covering the period prior to September 1, 1933, were filed voluntarily by said Georgia Tech Athletic Association, and the taxes arising from admissions prior to said date and collected by said Association from its spectators and patrons were voluntarily paid to the Collector of Internal

Revenue, defendant herein; that no returns of taxes due and payable for the months of September, October, November, and December, 1933, and January, 1934, were voluntarily filed by said Georgia Tech Athletic Association with the Collector of Internal Revenue, and that the amounts due and owing and collected by said Georgia Tech Athletic Association for said months are involved in suit pending in the above entitled Court bearing the same title as this proceeding and being Number 754 in Equity.

Further answering the thirteenth paragraph of the bill, defendant is informed and believes and, therefore, affirmatively avers that only $895.37 was collected by said Charles E. Martin or the said University of Georgia Athletic Association as tax from the spectators of athletic games or contests during the said months of September and October, 1934; that no returns of tax due and payable for said months were voluntarily filed by the said Charles E. Martin or the said University of Georgia Athletic Association with the Collector of Internal Revenue; that the amount due and owing and collected by said Association as admissions tax as aforesaid was ascertained by representatives of said defendant upon investigation of the records of said University of Georgia Athletic Association by and with its consent.

14.

Defendant denies the averments contained in the fourteenth paragraph of the bill.

Further answering the fourteenth paragraph of the

bill, defendant is informed and believes and, therefore, affirmatively avers that complainant has no right, title, or interest whatsoever in or to the funds or any part thereof collected by said Dr. A. H. Armstrong or said Georgia Tech Athletic Association and Charles E. Martin or said University of Georgia Athletic Association, respectively, as proceeds of admissions charged to spectators admitted to said athletic games and contests, but that said funds and the whole thereof, except that part thereof collected as admissions tax, belong respectively to said Georgia Tech Athletic Association and University of Georgia Athletic Association and are respectively used by them exclusively, and that part of said funds collected as tax belongs to the United States of America, and is held by the persons receiving payment for such admissions and collecting said tax, as a special fund in trust for the United States.

15.

For answer to the fifteenth paragraph of the bill, defendant denies that said or any warrants for distraint are or were proceeding illegally and/or contrary to law for the reasons averred by complainant in the fifteenth paragraph of the bill or for any reason whatsoever or at all; denies that complainant's said or any branches constitute a department of the government of the State of Georgia; denies that complainant, or any of its branches, in sponsoring, holding, or carrying on athletic events to which admissions are charged is carrying out purely or any governmental function incident to the government of the State of Georgia, or otherwise; denies that as such, or at all, in carrying

out said or any intercollegiate contests for which it, or anyone else, charged and/or collected admissions is engaged in any governmental operation or function whatsoever; denies that admissions to such contests were not subject to taxation under the Revenue Laws of the United States; and denies that such admissions are not subject to any control or interference by the Federal Government or any of its branches, including the Congress and/or the defendant.

Further answering the fifteenth paragraph of the bill, defendant affirmatively avers that if the complainant has any interest in the funds derived from the proceeds of admissions charged from spectotors by said Dr. A. H. Armstrong or said Georgia Tech Athletic Association and Charles E. Martin or said University of Georgia Athletic Association admitted to their respective games and contests, and if complainant is engaged in carrying out said intercollegiate contests through said Charles E. Martin or said University of Georgia Athletic Association and said Dr. A. H. Armstrong or said Georgia Tech Athletic Association, and if it is charging admissions therefor, it is to that extent acting as a private, corporate, legal individual engaged in a commercial enterprise, and to that extent complainant is not a necessary agency for legitimate purposes of state government but is merely the instrument through which entertainment, for which a charge is made, is furnished to the public. Defendant further avers that if and to the extent complainant is engaged in the sale of admissions to athletic events, it stands upon the same footing upon which every other operator of a place of entertainment and amusement stands where admissions are sold by private

individuals and private corporations who add the internal revenue excise to the price of admission and the purchaser pays it.

Defendant further avers that the tax imposed by the revenue laws of the United States and described in the bill is not a direct tax but an excise tax upon a salable article which is paid by the purchaser; said tax is laid upon the sale of the ticket and there is no compulsion upon anyone to purchase.

Defendant further avers that the excise imposed by the revenue laws of the United States, and described in the bill, will not be paid by the taxpayers of Georgia but by purchasers of admissions to athletic games and contests sold to spectators by said Charles E. Martin or said University of Georgia Athletic Association and said Dr. A. H. Armstrong or said Georgia Tech Athletic Association, respectively, and such admissions will not be expended for ordinary governmental purposes but are receipts resulting from carrying on a commercial business.

16.

For answer to the sixteenth paragraph of the bill, defendant admits that in doing the acts complained of in the bill of complaint, he has been proceeding under the provisions of Section 500 (a) (1) and Section 500 (b) of the Revenue Act of 1926 and Section 500 (b) (1) (e) of the Revenue Act of 1926, as amended by Section 711 (c) of the Revenue Act of 1932, and for a true, correct, and complete statement of the pro-

visions of those sections of the statute defendant respectfully refers the Court to said sections.

17.

For answer to the seventeenth paragraph of the bill, defendant denies that a proper, or any, construction, interpretation and/or enforcement of said, or any, Act would exempt from the operation thereof any and/or all branches or departments of the governments of any of the states, including plaintiff, or at all.

Further answering the seventeenth paragraph of the bill, defendant asserts that the averments therein contained constitute conclusions of law.

18.

For answer to the eighteenth paragraph of the bill, the defendant denies that the Commissioner of Internal Revenue has construed said act as being applicable to and/or enforceable against the departments of government of the several or any states, and denies that complainant is a department of government of any state. Defendant admits that the Commissioner of Internal Revenue promulgated "Informal Ruling No. 7" on July 28, 1934, and that the same provides substantially as quoted by complainant in said eighteenth paragraph of the bill.

19.

For answer to the nineteenth paragraph of the bill, defendant admits that he is seeking to collect the tax

described in said bill pursuant to said ruling of the Commissioner of Internal Revenue. The defendant denies all the remainder of the averments of said paragraph.

Further answering the nineteenth paragraph of the bill, defendant affirmatively avers that the said Charles E. Martin or said University of Georgia Athletic Association and said Dr. A. H. Armstrong or said Georgia Tech Athletic Association have collected from purchasers of tickets of admission to their respective athletic events the admissions tax provided by law to be collected thereon and are wrongfully withholding the payment of the same to the defendant. Defendant denies each and every averment in the nineteenth paragraph of the bill not herein specifically admitted, explained, or qualified.

20.

For answer to the twentieth paragraph of the bill, defendant denies that neither the University of Georgia nor the Georgia School of Technology, pursuant to complainant's or any instructions, have placed upon each or any ticket so sold the words quoted in the twentieth paragraph of the bill, but on the contrary avers that both the Georgia Tech Athletic Association and the University of Georgia Athletic Association have each had printed or stamped on tickets sold by them, respectively, the respective statements set forth in paragraph eight thereof.

21.

For answer to the twenty-first paragraph of the bill,

defendant denies that said Act or any part thereof so construed by the Commissioner of Internal Revenue, or otherwise, is unconstitutional, for the reasons set forth in the twenty-first paragraph of the bill, for any other reason, or at all. Further answering the twenty-first paragraph of the bill, defendant denies the materiality, relevency, and/or the accuracy of the arguments, legal conclusions, and averments contained in the twenty-first paragraph of the bill.

Further answering the twenty-first paragraph of the bill, defendant is informed and believes and therefore affirmatively avers that the complainant has no such right, title, or interest in or to the funds involved herein or any part thereof as would permit complainant to challenge in this proceeding either the constitutionality of the taxing statutes or the validity of the assessment or assessments made against the persons receiving payment of the admissions, the collection of the tax upon which is sought to be enjoined herein.

22.

For answer to the twenty-second paragraph of the bill, defendant denies that complainant and/or its said, or any, departments are branches of the State Government of Georgia, and denies that complainant or any of its said branches have been or will be burdened with the duty of collecting taxes for the Federal Government, or for the defendant.

Further answering defendant avers that he is without knowledge with respect to the remaining averments contained in said paragraph.

23.

For answer to the twenty-third paragraph of the bill, defendant denies that complainant has no remedy at law by paying the tax and suing for its recovery, but affirmatively avers that under the applicable administrative provisions of the Internal Revenue laws summary methods have been provided for the assessment and collection of the taxes involved herein and then for the administrative correction, under claim for refund, or any errors, inaccuracies, or injustices in connection with the determination, assessment, and collection of such taxes; avers that such statutes affords persons receiving payment of admissions and collecting and paying over to the United States the amount of the tax adequate opportunity for obtaining a judicial review at law in the premises such is afforded to any taxpayer who has overpaid his taxes; and avers that such law provide a complete system of corrective justice as between the Government of the United States or its representatives and the person or persons receiving payment of admissions and collecting and paying over the amount of the tax as to the matters involved herein, whereby complainant has a plain, adequate and complete remedy at law in the premises. Further answering, defendant denies that the Commissioner has made any interpretation of said Act which would prevent complainant, if it is the person receiving payment for such admissions and collecting said tax, from making payment of the tax, filing claim for refund, and if rejected, of filing suit against the Collector of Internal Revenue for the recovery thereof; denies that if said tax were paid by complainant, it would be irreparably, or otherwise,

damaged; denies that the amount so paid would be irrevocably, or otherwise, lost if it should be determined that such tax had been exacted illegally; denies that neither complainant and/or its said branches are liable for such tax under the law, and/or under the construction placed on said law by the Commissioner of Internal Revenue and/or the defendant, but on the contrary defendant affirmatively asserts all and singular so much and such part of the fourteenth paragraph hereof as demonstrates that if complainant is engaged in carrying out said athletic contests and charging and collecting admissions therefor, complainant is acting as a private, corporate, legal individual, and liable for the collection and payment over to the United States of the tax herein involved. Further answering, defendant denies that such or any procedure would involve a multiplicity of suits with respect to any actions at law for the recovery of the tax involved herein in the event it may or should be determined that such tax has been or would be exacted illegally, but on the contrary defendant avers that Section 3228, 3220 and 3226 of the Revised Statutes, as amended, make adequate provision for presenting claims for refund of taxes alleged to have been exacted illegally, to the Commissioner of Internal Revenue at any time within four years after payment of the disputed exactions, whereby the person receiving payment for such admissions, collecting and paying over said tax might join his or its payments of taxes for many months in one claim for refund and in one suit at law in the event the Commissioner should reject such claim for refund in whole or in part. Further answering, defendant denies each and every averment in said twenty-third para-

graph of the bill not herein specfically admitted, explained or qualified.

Further answering the twenty-third paragraph of the bill, defendant affirmatively avers that if said tax or any part thereof is erroneously collected or is, or should be, held to be illegally exacted, the said Georgia Tech Athletic Association and said University of Georgia Athletic Association, respectively, or any other person receiving payments for such admissions, have an adequate remedy at law in the premises by payment of the tax in question and bringing suit against the collecting officer for its recovery.

24.

For answer to the twenty-fourth paragraph of the bill, defendant denies that he is seeking or has sought to distrain upon any property belonging to complainant; denies that he is seeking or has sought to collect from complainant and/or its branches any admissions taxes whatsoever; and denies that any action taken or sought to be taken by defendant with respect to the taxes herein involved is contrary to law. Further answering, defendant denies each and every averment in said twenty-fourth paragraph of the bill not herein specifically admitted, explained or qualified.

Further answering the twenty-fourth paragraph of the bill, defendant affirmatively avers that the amount of tax and the interest thereon due and owing to the United States from said Georgia Tech Athletic Association and the said University of Georgia Athletic Association, respectively, has been lawfully assessed

and the said Georgia Tech Athletic Association and the said University of Georgia Athletic Association are respectively liable for the tax assessed against them and described in the bill of complaint. Defendant avers that such liability is primary and direct and may be enforced. Defendant further avers that he has a right under the law to collect from said Georgia Tech Athletic Association and from said University of Georgia Athletic Association, respectively, the tax involved in this proceeding. Defendant further avers that neither complainant, the Georgia Tech Athletic Association, the University of Georgia Athletic Association, nor any one on its or their behalf can challenge the validity of such tax until said tax has first been paid.

25.

For answer to the twenty-fifth paragraph of the bill, defendant denies that said, or any, proceedings under said warrants for distraint and/or levies interfere with the proper, or other, operation of the government of the State of Georgia, or at all; denies that the same prevents the use of any funds belonging to complainant; denies that the same should be restrained.

Further answering the twenty-fifth paragraph of the bill defendant affirmatively avers that complainant has no such right, title, or interest in or to the funds involved herein or any part thereof as would permit complainant to challenge in this proceeding either the constitutionality of the tax imposing statute or the validity of the assessment or assessments against the person or persons receiving payment for the ad-

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missions to the athletic contests hereinbefore described, and the collection of which assessment or assessments are sought to be enjoined herein.

Further answering the twenty-fifth paragraph of the bill defendant affirmatively avers that complainant is not the real party in interest in that no part of the amounts involved is the property of complainant, and complainant has no material interest in the outcome of this suit.

26.

For answer to the twenty-sixth paragraph of the bill, defendant denies that under the, or any, of the circumstances involved, or under any of the circumstances averred in the bill, or at all, the defendant is attempting to collect from complainant taxes due from various individuals; denies that complainant is a department of the government of the State of Georgia; and denies that there are any exceptional and/or extraordinary circumstances involved herein. Further answering, defendant denies that the materiality and accuracy of the arguments, legal conclusions, and averments set forth in said paragraph.

Further answering the twenty-sixth paragraph of the bill, defendant avers that the averments contained therein constitute conclusions of law.

27.

For answer to the twenty-seventh paragraph of the bill, defendant admits that the State of Georgia

is a sovereign state. Defendant denies, however, that either complainant or its branches is sovereign and/or independent in its or their sphere of governmental action and/or operation; denies that complainant and/or its branches are carrying out any governmental functions whatsoever in so far as its activities may relate to the holding of athletic contests or the charging and collecting of admissions thereto; and denies that he is attempting or that he has attempted to interfere or control complainant in any manner whatsoever in the exercise of any functions, governmental or otherwise, which complainant may be entitled to carry on.

28.

For answer to the twenty-eighth paragraph of the bill defendant denies that if an injunction does not issue as prayed for, or otherwise, complainant will suffer irreparable or other injury and/or damage, through the actions of defendant, his agents, deputies, servants, and/or employees, or at all; and denies that complainant has no adequate remedy at law. With respect to the averments contained in the twenty-eighth paragraph of the bill, the defendant affirmatively asserts, all and singular, so much and such parts of the twenty-third paragraph of this answer as demonstrate that the complainant has an adequate remedy at law in the premises.

29.

For answer to the twenty-ninth paragraph of the bill, defendant says that he is without knowledge with respect to the averments therein contained.

With respect to the averments of the twenty-ninth paragraph of the bill, defendant asserts all and singular so much and such part of the eighth paragraph hereof as demonstrates that said Georgia Tech Athletic Association and said University of Georgia Athletic Association each have collected from the purchasers of tickets of admission to their respective athletic events the amounts provided by law to be collected from such purchasers, respectively, as and for the admissions tax thereon imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, whereby no part of said funds is the property of complainant, and complainant has no right or title to the same or any part thereof.

30.

For answer to the thirtieth paragraph of the bill, defendant denies that complainant is a department of the State of Georgia. Further answering defendant says that he is without knowledge with respect to the remaining averments contained in the thirtieth paragraph of the bill.

With respect to the averments of the thirtieth paragraph of the bill, defendant asserts all and singular so much and such part of the affirmative averments herein contained as demonstrates that said complainant is not the real party in interest in this proceeding, whereby there is no actual controversy between complainant and defendant herein, and no such actual controversy is likely to arise hereunder.

Further answering the thirtieth paragraph of the bill, defendant avers that since the filing of the bill

of complaint herein and the amendments thereto the Congress has enacted, and on August 30, 1935, the President approved Public Law No. 407 of the 74th Congress, First Session (H. R. 8974), entitled "An Act to provide Revenue, equalize taxation, and for other purposes", known and cited as the Revenue Act of 1935; and in and by Section 405 of said Act, any power which this Court may have ever had to grant a Declaratory Judgment in this proceeding has been completely removed.

31.

For answer to the thirty-first paragraph of the bill, defendant denies that any of the individuals who paid admissions to athletic contests held at either the University of Georgia or at the School of Technology since June 5, 1932 (the effective date of the Revenue Act of 1932), where the price of admission was in excess of forty-one cents, are or were not liable for the admission tax thereon; denies that the collection of said admissions is one, or any, means by which complainant, through its said branches or otherwise, receives revenue for the purpose of carrying out its said, or any, governmental functions, or at all; denies that any tax imposed upon individuals attending said athletic contests would constitute plain, or any interference with any governmental functions of the State of Georgia; and denies that the same would constitute any burden whatsoever upon any governmental functions of the State of Georgia, or at all. Further answering defendant denies each and every averment in said thirty-first paragraph of the bill not herein specifically admitted, explained or qualified.

32.

For answer to the thirty-second paragraph of the amendments to the bill, defendant says that he is without knowledge with respect to the averments therein contained, or contained in any of the sub-paragraphs thereof. Further answering defendant denies the materiality and accuracy of the arguments, legal conclusions, and averments set forth therein. Defendant avers, however, that participation in inter-collegiate contests to which admissions are charged, by students in attendance at the University of Georgia and/or the School of Technology, is not a requirement for graduation from or for any degree awarded by either of said schools.

33.

For answer to the thirty-third paragraph of the amendments to the bill, defendant denies that at one time in the past, or at any other time, or at all, complainant through the School of Technology, or otherwise, made a return of admissions collected, and/or paid an amount or any amount whatsoever as a tax, or otherwise, or at all, to the Collector of Internal Revenue for said, or any, district; denies that complainant then, or at any time, or at all, filed a claim for refund; denies that the Commissioner of Internal Revenue denied any claim for refund whatsoever filed by complainant, upon the grounds averred in said paragraph or upon any other grounds, or at all.

Further answering the thirty-third paragraph of the amendments to the bill, defendant affirmatively

avers that on or about November 30, 1932, the Georgia Tech Athletic Association filed with the Collector of Internal Revenue for the Collection District of Georgia a return of tax on admissions to athletic events held at the School of Technology during the month of October, 1932, and on or about December 1, 1932, paid said tax to said Collector of Internal Revenue, amounting to $5,111.37. Thereafter, and on or about December 21, 1932, the said Georgia Tech Athletic Association filed with the said Collector of Internal Revenue a return of tax on admissions to athletic events held at said School of Technology during the month of November, 1932, and on or about December 23, 1932, paid said tax to said Collector of Internal Revenue, amounting to $5,848.80. Thereafter, on or about February 14, 1933, and February 28, 1933, respectively, said Georgia Tech Athletic Association paid to said Collector of Internal Revenue $158.33 and $63.12, respectively, for admissions tax to athletic events held at said School of Technology during the months of January and February, 1933, respectively. Thereafter and on or about July 11, 1933, said Georgia Tech Athletic Association filed with the Commissioner of Internal Revenue a claim for refund for $11,181.62, representing admissions taxes paid by it for the months of October and November, 1932, and January and February, 1933. Said claim was refund for rejected by said Commissioner of Internal Revenue in full, upon the grounds that Subdivision (e) of Section 500 of the Revenue Act of 1926, which was added by Section 711 (c) of the Revenue Act of 1932, provides that the exemption from tax provided by subdivision (b) (1) shall not be allowed in the case of admissions to any athletic game or exhibition, the proceeds of

which inure wholly or partly to the benefit of any college or university (including any academy or the military or naval forces of the United States.) Said Georgia Tech Athletic Association was notified of the rejection of said claim for refund by letter dated October 11, 1933.

Further answering, defendant avers that any action which may have been taken by the Commissioner of Internal Revenue with respect to Federal admissions tax liability for admissions to athletic contests participated in by students in attendance at the School of Technology, during the year 1932, or for any year, neither operates to preclude correct action as to the issues herein involved nor as an admission against interest by this defendant or upon his behalf.

34.

For answer to the thirty-fourth paragraph of the amendments to the bill, defendant says that he is without knowledge with respect to the averments therein contained. Defendant avers, however, that said averments are irrelevent and immaterial to any issue of law or fact involved in this proceeding.

35.

For answer to the thirty-fifth paragraph of the amendments to the bill, purporting to be an amendment to the thirteenth paragraph of the bill, defendant adopts all and singular his answer to the thirteenth paragraph of the bill to the same effect as if repeated at length herein. Further answering defendant denies

that said or any warrants for distraint cover in fact, or at all, penalties under Section 1114 of the Revenue Act of 1926, or under any other statute, or at all; denies that said, or any, penalties are criminal and/or punitive in nature; and denies that defendant is seeking, or ever has sought to collect any taxes whatsoever from complainant.

Further answering the Bill of Complaint and the amendments thereto filed herein, and by way of affirmative defense thereto, and for further, separate, and complete defense thereto, and further reserving and relying upon the motion to dismiss filed herein, the defendant avers;

1.

Defendant affirmatively asserts all and singular so much and such parts of the affirmative averments set forth in the several preceding paragraphs hereof as demonstrate that Georgia Tech Athletic Association and the University of Georgia Athletic Association through their respective officers, agents, servants and employees, had each collected from purchasers of tickets to their respective intercollegiate athletic events the respective amounts required by law to be collected as admissions tax thereon amounting in all to the respective amounts herein involved; that neither the complainant, the said Georgia Tech Athletic Association, the University of Georgia Athletic Association, nor anyone on its or their behalf have made or filed any returns of admissions taxes so collected and required by law to be so collected by said Georgia Tech Athletic Association, and said University of Georgia Athletic Association, re-

spectively, for the months of September and October, 1934, nor any part thereof; that neither the complainant, the said Georgia Tech Athletic Association, the said University of Georgia Athletic Association, nor anyone on its or their behalf have paid to the defendant or to the United States any taxes whatsoever, which accrued by reason of the sale by said respective athletic associations of tickets of admission to athletic games and contests promoted and/or sponsored and held by said Athletic Associations, respectively, during the months of September and October, 1934; that said Georgia Tech Athletic Association is indebted to the United States of America in the sum of $3,914.63, together with interest thereon as provided by law on account of admissions tax for the months of September and October, 1934, and the said University of Georgia Athletic Association is indebted to the United States of America in the sum of $895.37, together with interest thereon as provided by law on account of admissions tax for the months of September and October, 1934; that the defendant has demanded of each of said associations and their respective officers, agents, servants and employees the amount of admissions tax so due and owing by each of them, respectively, and that the same and the whole thereof remains unpaid; and that the complainant has no right, title or interest to any part of the funds involved in this proceeding; all of which is reasserted and averred to all intents and purposes as if the same were repeated and set forth at length herein.

Defendant further avers that under and pursuant to the provisions of Section 607 of the Revenue Act

of 1934, the amounts of admissions tax so collected by the University of Georgia Athletic Association, or by Charles E. Martin, on admissions to athletic events for the months of September and October, 1934, amounting to $895.37, and the amounts of admissions tax so collected by the Georgia Tech Athletic Association, or by Dr. A. H. Armstrong, on admissions to athletic events for the months of September and October, 1934, amounting to $3,914.63, are special funds held in trust for the United States, and the amounts thereof are and were at all times herein mentioned subject to assessment, collection and payment in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such funds arose.

2.

That this is a suit in equity to enjoin the collection of admissions taxes assessed against the Georgia Tech Athletic Association and the University of Georgia Athletic Association under the provisions of Section 500 (a) (1) of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, and Section 500 (e) of the Revenue Act of 1926, as added by Section 711 (c) of the Revenue Act of 1932, in the amounts of $3,914.63 and $895.37, respectively, and that the maintenance of this suit is expressly forbidden by the provisions of Section 3224 of the Revised Statutes of the United States.

3.

That in doing the acts complained of in this suit, the defendant was doing so in his official capacity as

Collector of Internal Revenue by direction and Author
ity of the Commissioner of Internal Revenue pursuan
to the internal revenue laws of the United States
and all of the acts of the defendant in connection wit
the matters and things charged in the Bill of Complain
and amendments thereto herein were committed b
him under color of his said office.

4.

That the taxes, collection of which is sought to b
enjoined in this suit, were legally assessed and are law
fully due and owing to the United States of America

5.

That insofar as tax liens are involved the Unite
States of America is the real party in interest whic
has not been sued herein and which may not be sue
without its consent.

6.

That by virtue of the premises and because th
complainant has no right, title or interest in or to an
part of the subject matter of this proceeding, and i
not a real party in interest, and because the Unite
States is the real party in interest in the ownershi
and right to the funds herein involved, there is n
actual controversy between complainant and defen
dant, or between any parties over which this Cour
has jurisdiction, within the purview of the Declara
tory Judgment Act.

7.

That the Declaratory Judgment Act was not intended by the Congress to be used for the litigation of questions arising under the Revenue Laws, and particularly was not intended as a means for obtaining injunctive relief and thereby restraining or interfering with the collection of Federal taxes.

8.

That this proceeding is not authorized by the provisions of the Declaratory Judgment Act and cannot be maintained.

Further answering the Bill of Complaint and amendments thereto filed herein, and by way of further affirmative, separate and complete defense thereto, defendant says that this Court is without jurisdiction to enjoin the collection of the taxes herein involved, because:

1.

Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any court of a suit for the purpose of restraining the assessment and collection of a Federal tax.

2.

The Bill of Complaint and the amendments thereto set forth no facts which, if true, would entitle complainant to the relief prayed for in a court of equity.

3.

Complainant has a plain, adequate and complete remedy in the ordinary course of law.

4.

Complainant is not the real party in interest, in that it affirmatively appears from the Bill of Complaint and amendments thereto, that the funds in controversy are the amounts collected by Georgia Tech Athletic Association and University of Georgia Athletic Association, respectively, as and for the tax on admissions to their respective athletic events, and not the property of complainant, and that complainant has no material interest in the outcome of this suit.

WHEREFORE, having fully answered the Bill of Complaint and amendments thereto, the defendant prays that the Bill of Complaint and amendments thereto be dismissed and that the temporary restraining order issued herein be discharged with costs.

W. E. PAGE,
Collector of Internal Revenue for the District of Georgia

LAWRENCE S. CAMP,
United States Attorney.

M. NEIL ANDREWS,
Assistant United States Attorney.

Solicitors for Defendant.

GEORGIA)
) ss:
FULTON COUNTY)

BEFORE ME, the undersigned attesting officer, personally appeared W. E. PAGE, who being duly sworn on oath says that he is Collector of Internal Revenue for the District of Georgia, that deponent has read the within and foregoing answer and that the facts stated are true to the best of deponent's knowledge, information and belief.

W. E. PAGE.

Sworn to and subscribed to before me, this 22nd day of April, 1936.

R. S. MOONEY

(NOTARIAL SEAL)

Due and lawful service of the within and foregoing answer acknowledged. Copy received. This 23rd day of April, 1936.

HAROLD HIRSCH & MARION SMITH,

M. E. KILPATRICK,

Solicitors for Complainant.

Filed April 23, 1936.

TITLE OMITTED.

MOTION TO DISMISS BILL OF COMPLAINT

Come now W. E. Page, Collector of Internal Revenue, defendant in the above entitled cause, by Lawrence S. Camp, United States Attorney in and for the Northern District of Georgia, and M. Neil Andrews, Assistant United States Attorney for said District, his attorneys, and after the close of all the evidence and before submission of said cause to the Court and prior to the announcement by the Court of its decision and the entry of final decree, and respectfully moves the Court for a dismissal of the bill of complaint and the amendments thereto on file herein, and that defendant have judgment for its costs as provided by law, on the following grounds:

I.

That the equities are with the defendant.

II.

That the plaintiff has failed to sustain the burden of proving a cause for equitable relief in its favor against the defendant.

III.

That the pleadings and the evidence in this case are insufficient in law to sustain a judgment and decree in favor of the plaintiff and against the defendant.

IV.

That under the law and the evidence the University of Georgia Athletic Association, its officers, agents, and employees, and the Georgia Tech Athletic Association, its officers, agents, and employees have collected for the United States of America admission taxes upon athletic games and events held during the months of September and October, 1934, in the respective amounts of $895.37 and $3,914.63, on account of taxes imposed by Section 500 (a) of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, which said respective amounts are special funds in trust for the United States, pursuant to the provisions of Section 607 of the Revenue Act of 1934.

V.

That under the law and the evidence the taxes involved in this proceeding were lawfully assessed by the Commissioner of Internal Revenue against the University of Georgia Athletic Association, Charles E. Martin, Trustee, University of Georgia Department of Athletics, and against Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Assn., Dr. M. L. Brittain, Dr. M. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Professor Floyd Field, Dr. A. H. Armstrong, Mr. George W. McCarty, Mr. Robert T. Jones, Jr., Mr. Jack Phillips, Dr. D. Kalhurst, and Mr. Glenn (W. H.), respectively, and each of them.

VI.

That under the law and the evidence the admissions to the athletic games or contests held or played at the University of Georgia and of the School of Technology during the months of September and October, 1934, to which the public was admitted upon the payment of an admission charge and participated in by students in attendance at said University and at School of Technology, respectively, were subject to the tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932.

VII.

That under the law and the evidence the tax imposed by Section 500 (a) of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, is not a direct tax but is a tax on admissions which is paid by the purchaser.

VIII.

That under the law and the evidence, if the State of Georgia or complainant has any interest in the funds derived from proceeds of admissions charged and collected from spectators admitted to athletic games or contests held or played at the University of Georgia or at the School of Technology and participated in by students in attendance at said University or at said School of Technology in competition with students in attendance at other colleges and universities; and if the State of Georgia or complainant is engaged in

carrying on said intercollegiate contests and charging admissions thereto, it or they to that extent are acting as a private corporate individual engaged in a commercial enterprise.

IX.

That under the law and the evidence neither the State of Georgia, the Regents of the University System of Georgia, the University of Georgia, the University of Georgia Athletic Association, the School of Technology, not the Georgia Tech Athletic Association has any right, title, or interest whatsoever in or to any part of that part of the proceeds of admissions to athletic contests and games, collected during the months of September and October, 1934, from spectators as a Federal tax by the University of Georgia Athletic Association and the Georgia Tech Athletic Association, respectively, upon the admissions to such games held or played at said University or at said School of Technology.

X.

That the complainant is not a department of the State government of Georgia.

XI.

That neither the complainant, the University of Georgia, the University of Georgia Athletic Association, Charles E. Martin, the School of Technology, the Georgia Tech Athletic Association nor Dr. A. H. Armstrong, nor either or any of them, nor any person

or persons acting by, through, or for them, or any of them, in the promoting, sponsoring and/or holding of intercollegiate athletic contests between teams composed of students of the University of Georgia and/or the School of Technology and teams composed of students of other colleges and universities, or between teams composed of their own students, respectively, to which the public is admitted upon the payment of an admission charge and for which an admission charge is made, is a governmental agency engaged in carrying out an essential governmental function, and no part of the funds involved in this proceeding is the property of complainant or subject to its use for any purpose whatsoever.

XII.

That this suit is specifically prohibited by the provisions of Section 3224, Revised Statutes.

XIII.

That complainant has a plain, adequate and complete remedy in the ordinary course at law.

XIV.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgement Act.

XV.

That this proceeding is not authorized by the pro-
sions of the Declaratory Judgment Act and cannot
e maintained.

XVI.

That under the law and the evidence the com-
ainant is not entitled to the relief prayed for in a
urt of equity.

XVII.

That under the law and the evidence the record
oes not contain any substantial evidence to sustain
ndings of fact and conclusions of law and decree in
vor of the plaintiff and against the defendant.

XVIII.

That the pleadings and the evidence in this case,
ith every inference that may be drawn from it, are
sufficient in law to sustain a judgment and decree
favor of the plaintiff and against the defendant.

XIX.

That the defendant, on the pleadings and the evi-
ence in this case, is entitled to judgment and decree
its favor against the plaintiff dismissing the bill of
omplaint.

In the event the Court overrules the defendant's
otion to dismiss on any of the specific grounds there-

in set forth, defendant respectfully excepts and prays that he be allowed an exception or exceptions to such action and ruling of the Court; and defendant further excepts and prays that he be allowed an exception or exceptions to the action and ruling of the Court in making and entering any findings of fact and conclusions of law or either thereof requested by plaintiff.

Respectfully submitted,

LAWRENCE S. CAMP,
United States Attorney

M. NEIL ANDREWS,
Assistant United States Attorney.

Filed Sept. 15, 1936.

TITLE OMITTED.

DEFENDANT'S MOTION FOR SPECIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

Comes now W. E. Page, Collector of Internal Revenue, defendant in the above entitled cause, by Lawrence S. Camp, United States Attorney in and for the Northern District of Georgia, and M. Neil Andrews, Assistant United States Attorney for said District, his attorneys, and respectfully moves the Court to make and enter the following specific findings of fact

and to declare and enter the following conclusions of law in said cause, to-wit:

FINDINGS OF FACT

I.

Complainant, Regents of the University System of Georgia, is an eleemosynary corporate entity created, existing, and operating under and by virtue of and pursuant to the laws of the State of Georgia, more particularly under Article 6, Title I, Part I, of an Act of the General Assembly of Georgia entitled "An Act to Simplify the Operations of the Executive Branch of the State Government by Abolishing Certain offices, boards, departments, commissions, and institutions; creating others; redistributing the powers, duties, and functions of said Executive Branch among such offices, boards, commissions, and departments as are herein created or hereby retained; defining such powers, duties, and functions and co-ordinating the same; fixing salaries, terms of office, method of appointment and election, duties and qualifications of the personnel in charge thereof; repealing all laws and parts of laws in conflict herewith; and for other purposes", approved August 28, 1931 (Georgia Laws 1931, pp. 20-31), and that said complainant, since the date of its creation and organization, has continuously maintained, and now maintains its principal office and place of business at Atlanta, Fulton County, Georgia, and in the Northern District of said State of Georgia.

II.

Defendant, W. E. Page, was appointed United States Collector of Internal Revenue for the Collection District of Georgia on June 20, 1933, and ever since that date has been and now is the duly appointed, qualified, and acting Collector of Internal Revenue for the Collection District of Georgia, and during all of said time was and now is a citizen and resident of Atlanta, Fulton County, Georgia, and in the Northern District of said State.

III.

Pursuant to said Act of the General Assembly of the State of Georgia, there was created the University System of Georgia which includes the University of Georgia located at Athens, Georgia, and the School of Technology located at Atlanta, Georgia, each of which is and at all times herein mentioned has been operated under the supervision and control of the said complainant, Regents of the University System of Georgia.

IV.

This is a suit of civil nature arising under the Constitution and Laws of the United States relating to internal revenue, and the defendant in doing the acts complained of was doing so in his official capacity as Collector of Internal Revenue by direction and authority of the Commissioner of Internal Revenue pursuant to the Internal Revenue Laws of the United States, and all of the acts of the defendant herein in connection

with the matters alleged and charged in the bill of complaint were committed by him under color of his said office.

V.

During the times alleged in the bill of complaint, there was maintained at the University of Georgia located at Athens, Georgia, a certain association of students and alumni known and designated as University of Georgia Athletic Association, which functions through a governing board composed of an equal number of faculty members and alumni of said University of Georgia. During the times mentioned in the bill of complaint, said University of Georgia Athletic Association was and is a corporation organized and existing under and by virtue of the laws of the State of Georgia. During the months of September and October, 1934, and prior thereto, said University of Georgia Athletic Association promoted and had control of the athletic games and events, in which teams composed of athletes who were students of said University of Georgia competed with teams composed of athletes who were students at other schools or colleges, to which spectators were admitted upon payment of a certain admission charge of varying amounts.

VI.

During the times mentioned in the bill of complaint, there was maintained at the School of Technology, located at Atlanta, Georgia, a certain association of students and alumni known and designated as the Georgia Tech Athletic Association which functioned

through a governing board composed of an equal number of faculty members and alumni of said School of Technology. Said Georgia Tech Athletic Association was incorporated under and pursuant to the laws of Georgia on or about March 8, 1934, and ever since that date has been and now is a corporation. Prior to the date of said incorporation, said Georgia Tech Athletic Association operated and functioned as an unincorporated association. During the months of September and October, 1934, and prior thereto, said Georgia Tech Athletic Association, either as an unincorporated association or as a corporation, promoted and had control of the athletic games and events, in which teams composed of athletes who were students of said School of Technology competed with teams composed of athletes who were students of other schools or colleges, to which spectators were admitted upon payment of a certain admission charge of varying amounts.

VII.

During the months of September and October, 1934, athletic games and contests were held or played in and upon an athletic field or stadium situated upon the grounds or campus of said University of Georgia, and the general public was admitted as spectators upon the payment of admission charges usually evidenced by tickets, which admission charges were collected and said tickets were sold by said University of Georgia Athletic Association, acting through one Charles E. Martin. During said months of September and October, 1934, such games or contests were held in said stadium, and the funds derived from the col-

ection of admissions or from the sale of tickets to such games and athletic events were collected and held by said University of Georgia Athletic Association. Tickets sold by the University of Georgia Athletic Association to spectators and used by them in gaining admission to said stadium to witness said games or contests had printed on the front or face thereof the words "Est'd Price....." (with the amount stated in accordance with the location of the seat to be occupied by the spectator), "Tax....." (with the percentage of the admission price due as tax stated), and "Total....." (being the total of Admission and Tax). Printed or stamped on the front of such tickets, there appeared the following statement:

> The University of Ga., being an instrumentality of the government of the State of Ga., contends that it is not liable for any admission tax. The amount collected as a tax, as shown on the face of this ticket, will therefore, be retained by the University as part of the admission unless it is finally determined that the University is liable for the tax.

Upon each of said tickets so sold and for each admission so sold said University of Georgia Athletic Association collected from the purchasers of such tickets or admissions, in addition to the admission price, an amount equal to ten per cent of said admission price as and for the admission tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, being the amount designated on said tickets as "Government Tax."

VIII.

Neither the complainant, the University of Georgia, nor the University of Georgia Athletic Association made any returns of taxes so collected to the defendant as Collector of Internal Revenue under Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, but said University of Georgia Athletic Association kept the amount so collected as a tax separate and apart from all other funds of said Association and deposited the same to the credit of said Association in the Citizens and Southern National Bank of Athens, Georgia. The amount so collected as tax by the said University of Georgia Athletic Association during said months of September and October, 1934, was $895.37, no part of which was been paid to the defendant or to the United States.

IX.

Upon the failure of the said University of Georgia Athletic Association or the said Charles E. Martin to make returns and pay the tax on said admissions, the defendant as Collector of Internal Revenue made returns for said University of Georgia Athletic Association of admissions tax due and owing by it for said months of September and October, 1934, showing admissions taxes due and owing thereon, amounting to $895.37, and an assessment in said amount was thereafter duly made by the Commissioner of Internal Revenue against Charles E. Martin, Trustee, University of Georgia Athletic Assn., University of Georgia Department of Athletics, all of Athens, Georgia.

X.

Upon the assessment of said tax, the defendant as Collector of Internal Revenue demanded payment of the same of the said Charles E. Martin, Trustee, University of Georgia Athletic Assn., University of Georgia Department of Athletics, and each of them, but said parties and each of them neglected and refused and still neglects and refuses to pay the same or any part thereof, and said tax and the whole thereof remains unpaid.

XI.

During the months of September and October, 1934, athletic games and contests were held or played in and upon an athletic stadium situated upon the grounds or campus of said School of Technology, to which the general public was admitted as spectators upon payment of admission charges usually evidenced by tickets, which admission charges were collected and sold by said admission charges were collected and sold by said Georgia Tech Athletic Association, acting through one Dr. A. H. Armstrong. During said months of September and October, 1934, such games or contests were held in said stadium, and the funds derived from the collection of admissions or from the sale of tickets to such games and athletic events were collected and held by said Georgia Tech Athletic Association. The tickets sold by said Georgia Tech Athletic Association to spectators to be used by them in gaining admission to said stadium to witness said games or contests had printed on the front or face thereof the words "Admission Price....." (with the amount

stated in accordance with the location of the seat to be occupied by the spectator), "Government Tax....." (with the percentage of the admission price due as tax stated), and "Total....." (being the total of Admission and Tax). Printed or stamped on the reverse side of each of such tickets, there appeared the following statement:

> Georgia School of Technology, being an instrumentality of the government of the State of Georgia, contends that it is not liable for any admission tax. The amount collected as a tax as shown on the opposite side of this ticket will therefore be be retained by the School of Technology as a part of the admission unless it is finally decided that it is liable for the tax.

Upon each of said ticket so sold and for each admission so sold said Georgia Tech Athletic Association collected from the purchasers of such tickets or admissions, in addition to the admission price, an amount equal to ten per cent of said admission price as and for the the admission tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, being the amount designated on said tickets as "Government Tax".

XII.

Neither the complainant, the Georgia School of Technology, nor the Georgia Tech Athletic Association, nor any other person, made any returns of taxes so collected and required by law to be so collected to the defendant as Collector of Internal Revenue under

Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932. The said Georgia Tech Athletic Association kept the amounts so collected as tax separate and apart from all other funds and deposited the same to the credit of said Association in the First National Bank of Atlanta, Georgia. The amount so collected as tax by said Georgia Tech Athletic Association during the months of September and October, 1934, was $3,914.63, no part of which has been paid to the defendant or to the United States.

XIII.

Upon the failure of said Georgia Tech Athletic Association or the said Dr. A. H. Armstrong to make the returns and pay the tax on said admissions, the defendant as Collector of Internal Revenue made returns for said Georgia Tech Athletic Association of admissions tax due and owing by it for said months of September and October, 1934, showing admission taxes due and owing thereon amounting to $3,914.63, and assessment of said amount was thereafter made by the Commissioner of Internal Revenue against Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Assn., Dr. M. L. Brittain, Dr. M. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Professor Floyd Field, Dr. A. H. Armstrong, Mr. George W. McCarty, Mr. Robert T. Jones, Jr., Mr. Jack Phillips, Mr. D. Kalkhurst, and Mr. Glenn (W. H.), all of Atlanta, Georgia.

XIV.

Upon the assessment of said tax as aforesaid, the defendant as Collector of Internal Revenue demanded payment of said tax of the said Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Assn., Dr. M. L. Brittain, Dr. M. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Professor Floyd Field, Dr. A. H. Armstrong, Mr. George W. McCarty, Mr. Robert T. Jones, Jr., Mr. Jack Phillips, Mr. D. Kalkhurst, and Mr. Glenn (W. H.), and each of them, but said parties and each of them neglected and refused and still neglect and refuse to pay the same or any part thereof, and said tax and the whole thereof remains unpaid.

XV.

During the months of September and October, 1934, the total admission charges collected, exclusive of Federal taxes to athletic games and contests, by said University of Georgia Athletic Association was not less that $8,953.70.

XVI.

During the months of September and October, 1934, the total admission charges collected, exclusive of Federal taxes to athletic games and contests, by said Georgia Tech Athletic Association was not less that $39,146.30.

XVII.

On or about October 24, 1934, and subsequent to the assessment of the taxes due the United States by said University of Georgia Athletic Association for said months of September and October, 1934, said defendant, as Collector of Internal Revenue, duly filed for record in the office of the Clerk of the District Court of the United States for the Northern District of Georgia, and also in the office of the Recorder of Clarke County, Georgia, a notice of tax lien on all the property of said University of Georgia Athletic Association as authorized by Section 3186 of the Revised Statutes, as amended by Section 613 of the Revenue Act of 1928.

XVIII.

Upon the failure and refusal of the University of Georgia Athletic Association to pay said taxes due the United States, the defendant as Collector of Internal Revenue issued a warrant for distraint which he placed in the hands of a Deputy Collector of Internal Revenue for said District for service thereof, which Deputy Collector of Internal Revenue served the same on or about October 24, 1934, upon Charles E. Martin as an officer of the said University of Georgia Athletic Association, and thereupon and on said date served on said Charles E. Martin two notices and demands for tax, demanding payment from said Charles E. Martin or from said University of Georgia Athletic Association the sum of $895.37 for admission taxes due on account of admissions collected by said Association during the months of September and October, 1934, and thereupon and on said date levied upon the

money, credit, bank deposit, and bank account property rights of the said University of Georgia Athletic Association in the Citizens and Southern National Bank of Athens, Georgia, and demanded payment and delivery to said defendant as Collector of Internal Revenue the said sum of $895.37, admissions tax, and that said bank failed and refused to deliver said sum or any part thereof to the defendant although said bank admitted that it had on deposit to the credit of "Charles E. Martin, Trustee" the sum of $1,119.71, which is the account in which was deposited the admissions taxes collected by said Charles E. Martin or said University of Georgia Athletic Association for the months of September and October, 1934.

XIX.

On October 25, 1934, and subsequent to the assessment of the taxes due the United States by said Georgia Tech Athletic Association for said months of September and October, 1934, said defendant as Collector of Internal Revenue duly filed for record in the office of the Clerk of the District Court of the United States for the Northern District of Georgia and also in the the office of the Recorder of Fulton County, Georgia, a notice of tax lien on all the property of said Georgia Tech Athletic Association as authorized by Section 3186 of the Revised Statutes, as amended by Section 613 of the Revenue Act of 1928.

XX.

Upon the failure and refusal of the Georgia Tech Athletic Association to pay said taxes due the United

States, the defendant as Collector of Internal Revenue issued a warrant for distraint which he placed in the hands of a Deputy Collector of Internal Revenue for said District for service thereof, which Deputy Collector of Internal Revenue served the same on or about October 25, 1934, upon Dr. A. H. Armstrong as an officer of the said Georgia Tech Athletic Association, and thereupon and on said date served on said Dr. A. H. Armstrong two notices and demands for tax, demanding payment from said Dr. A. H. Armstrong or from said Georgia Tech Athletic Association the sum of $3,914.63 for admission taxes due on account of admissions collected by said Association during the months of September and October, 1934, and thereupon and on said date levied upon the money, credit bank deposit, and bank account property rights of the said Georgia Tech Athletic Association in the First National Bank of Atlanta, Georgia, and demanded payment and delivery to said defendant as Collector of Internal Revenue the said sum of $3,914.63 admissions tax, and that said bank failed and refused to deliver said sum or any part thereof to the defendant although said bank admitted that it had on deposit to the credit of "Georgia Tech Athletic Association" the sum of $3,914.63, which is the account in which was deposited the admissions taxes collected by said Dr. A. H. Armstrong or said Georgia Tech Athletic Association for the months of September and October, 1934.

XXI.

On or about November 30, 1932, there was filed in the office of the Collector of Internal Revenue for the

Collection District of Georgia on Treasury Form 729 by Georgia Tech Athletic Association, verified by Floyd Field, Treasurer, a return of admissions taxes for the month of October, 1932, on account of admissions to athletic events held at the School of Technology during said month, amounting to $5,111.37, and said Georgia Tech Athletic Association paid said tax on December 1, 1932.

XXII.

On or about December 21, 1932, there was filed in the office of the Collector of Internal Revenue for the Collection District of Georgia on Treasury Form 729 by Georgia Tech Athletic Association, verified by Floyd Field, Treasurer, a return of admissions taxes for the month of November, 1932, on account of admissions to athletic events held at the School of Technology during said month, amounting to $5,848.80, and said Georgia Tech Athletic Association paid said tax on December 23, 1932.

XXIII.

Thereafter and on or about July 11, 1933, said Georgia Tech Athletic Association filed with the Commissioner of Internal Revenue a claim for refund for $11,181.62 for admissions taxes for the month of October and November, 1932, and January and February, 1933, upon the ground that the Georgia Tech Athletic Association is an instrumentality of a political subdivision of the State of Georgia and exempt from the imposition of the Federal admissions tax. Said claim for refund was thereafter rejected by the Commissioner of In-

ternal Revenue, of which rejection the said Georgia Tech Athletic Association was advised by letter dated October 11, 1933. Said claim for refund was rejected upon the ground that said admissions were not exempt from taxation by reason of the provisions of subdivision (e) of Section 500 of the Revenue Act of 1926, which was added by Section 711 (c) of the Revenue Act of 1932.

Upon the foregoing special findings of fact, which are hereby made a part of the judgment and decree herein, the Court finds and enters the following:

CONCLUSIONS OF LAW

I.

That the equities are with the defendant.

II.

That the plaintiff has failed to sustain the burden of proving a cause for equitable relief in its favor against the defendant.

III.

That the pleadings and the evidence in this case are insufficient in law to sustain a judgment and decree in favor of the plaintiff and against the defendant.

IV.

That under the law and the evidence the University

of Georgia Athletic Association, its officers, agents, and employees, and the Georgia Tech Athletic Association, its officers, agents, and employees have collected for the United States of America admission taxes upon athletic games and events held during the months of September and October, 1934, in the respective amounts of $895.37 and $3,914.63, on account of taxes imposed by Section 500 (a) of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, which said respective amounts are special funds in trust for the United States, pursuant to the provisions of Section 607 of the Revenue Act of 1934.

V.

That under the law and the evidence the taxes involved in this proceeding were lawfully assessed by the Commissioner of Internal Revenue against the University of Georgia Athletic Association, Charles E. Martin, Trustee, University of Georgia Department of Athletics, and against Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Assn., Dr. M. L. Brittain, Dr. M. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Professor Floyd Field, Dr. A. H. Armstrong, Mr. George W. McCarty, Mr. Robert T. Jones, Jr., Mr. Jack Phillips, Mr. D. Kalkhurst, and Mr. Glenn (W. H.), respectively, and each of them.

VI.

That under the law and the evidence the admissions to the athletic games or contests held or played at the University of Georgia and at the School of Tech-

nology during the months of September and October, 1934, to which the public was admitted upon the payment of an admission charge and participated in by students in attendance at said University and at said School of Technology, respectively, were subject to the tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932.

VII.

That under the law and the evidence the tax imposed by Section 500 (e) of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, is not a direct tax but is a tax on admissions which is paid by the purchaser.

VIII.

That under the law and the evidence, if the State of Georgia or complainant has any interest in the funds derived from the proceeds of admissions charged and collected from spectators admitted to athletic games or contests held or played at the University of Georgia or at the School of Technology and participated in by students in attendance at said University or at said School of Technology in competition with students in attendance at other colleges and universities; and if the State of Georgia or complainant is engaged in carrying on said intercollegiate contests and charging admissions thereto, it or they to that extent are acting as a private corporate individual engaged in a commercial enterprise.

IX.

That under the law and the evidence neither the State of Georgia, the Regents of the University System of Georgia, the University of Georgia, the University of Georgia Athletic Association, the School of Technology, nor the Georgia Tech Athletic Association has any right, title, or interest whatsoever in or to any part of that part of the proceeds of admissions to athletic contests and games, collected during the months of September and October, 1934, from spectators as a Federal tax by the University of Georgia Athletic Association and the Georgia Tech Athletic Association, respectively, upon the admissions to such games held or played at said University or at said School of Technology.

X.

That the complainant is not a department of the State government of Georgia.

XI.

That neither the complainant, the University of Georgia, the University of Georgia Athletic Association, Charles E. Martin, the School of Technology, the Georgia Tech Athletic Association, nor Dr. A. H. Armstrong, nor either or any of them, nor any person or persons acting by, through, or for them, or any of them, in the promoting, sponsoring and/or holding of intercollegiate athletic contests between teams composed of students of the University of Georgia and/or School of Technology and teams composed of students of

other colleges and universities, or between teams composed of their own students, respectively, to which the public is admitted upon the payment of an admission charge and for which an admission charge is made, is a governmental agency engaged in carrying out an essential governmental function, and no part of the funds involved in this proceeding is the property of complainant or subject to its use for any purpose whatsoever.

XII.

That this suit is specifically prohibited by the provisions of Section 3224, Revised Statutes.

XIII.

That complainant has a plain, adequate and complete remedy in the ordinary course at law.

XIV.

That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgement Act.

XV.

That this proceeding is not authorized by the provisions of the Declaratory Judgement Act and cannot be maintained.

XVI.

That under the law and the evidence the complainant is not entitled to the releif prayed for in a court of equity.

XVII.

That under the law and the evidence the record does not contain any substantial evidence to sustain findings of fact and conclusions of law and decree in favor of the plaintiff and against the defendant.

XVIII.

That the pleadings and the evidence in this case, with every inference that may be drawn from it, are insufficient in law to sustain a judgment and decree in favor of the plaintiff and against the defendant.

XIX.

That the defendant, on the pleadings and the evidence in this case, is entitled to judgment and decree in its favor against the plaintiff dismissing the bill of complaint.

In the event the Court fails or refuses to make, adopt, or enter the foregoing findings of fact and conclusions of law or any thereof, defendant respectfully excepts and prays that he be allowed an exception or exceptions to such action and ruling of the Court; and defendant further excepts to any ruling and action of the Court in making and entering any

other findings of fact and conclusions of law or either thereof.

Respectfully submitted,

LAWRENCE S. CAMP,
United States Attorney.

M. NEIL ANDREWS,
Assistant United States Attorney.

Filed Sept. 15, 1936.

TITLE OMITTED.

ORDER OVERRULING DEFENDANT'S MOTION OF SEPTEMBER 15, 1936 TO DISMISS

The defendant having at the conclusion of the complainant's evidence presented a written motion to dismiss the complainant for the reasons appearing in said motion; it is now, after argument of counsel upon said motion, ORDERED AND ADJUDGED AND DECREED that the said motion be and the same is hereby overruled and denied.

This the 16th day of September, 1936.

E. MARVIN UNDERWOOD,
U. S. JUDGE.

Filed September 16th, 1936.

TITLE OMITTED.

COMPLAINANT'S REQUEST FOR FINDINGS OF FACT

Comes now the Complainant and requests the court to make the following findings of fact:

1. This is a suit in equity, arising under the Internal Revenue Laws of the United States.

2. Complainant is an agency and instrumentality of the State of Georgia, reincorporated by an Act of the Georgia Legislature in the year 1931.

3. Defendant, W. E. Page, is a citizen and resident of Atlanta, Georgia, in the Northern District of Georgia, and is Collector of Internal Revenue.

4. The University of Georgia and the School of Technology are branches of the complainant, so made by an Act of the Georgia Legislature in the year 1931.

5. The program of education at each of said branches is and was, during the year, 1934, adopted by the faculties of said two branches and approved by the president of each of said two branches.

6. Said program of education at each branch was threefold, namely: mental training, moral and spiritual development, and physical development, the entire program in each respect being under the direct and sole supervision of the faculty of each of said branches.

7. The program of education at each of said two branches was in turn approved by the Board of Regents of the University System of Georgia, the complainant herein.

8. Included in the program of Physical education were intermural athletics and intercollegiate athletics.

9. Approximately 80% of the male students at each of said branches engaged in the program of physical education during the year 1934. Approximately 30% of the student body of each branch engaged in the intercollegiate athletic educational part of the program.

10. At both branches participation in the physical education program is required of all students who cannot qualify for R. O. T. C. training.

11. At the branch known as the University of Georgia in Athens, Georgia, participation in intercollegiate athletics is given credit towards the degree of Bachelor of Science in Physical Education.

12. The physical education program likewise includes all women students, there being thirty courses in physical education for women.

13. The expenses and costs of the physical education program at each branch are made possible through admissions to athletic contests engaged in by teams representing the respective branches, together with a student's fee collected from each student at each branch, all of which sums are used for said purposes.

14. Without such admission charges and student fee the physical education at each branch could not be carried on.

15. During the year 1934, each ticket of admission to such athletic events at the branch, the University of Georgia, contained the following notice:

> "The University of Georgia, being an instrumentality of the government of the State of Georgia, contends that it is not liable for any admissions tax. The amount stated as a tax is so stated because the University is required to do so by Treasury regulations pending a decision as to its liability in this respect. The amount is collected by the University as a part of the admission and will be retained as such unless it is finally determined that the University is itself liable for the tax."

the same notice appearing on all of the tickets of admission to athletic contests at the School of Technology, except the name "School of Technology" is inserted in lieu of the name "University of Georgia."

16. 10% of the admissions collected by the Athletic Association of each such branch was placed in the various bank accounts belonging to the complainant, but nominally in the names, respectively, as follow: Charles E. Martin, Agent; University of Georgia Department of Athletics; Athletic Association of the University of Georgia, and Athletic Association of the School of Technology.

17. The defendant, during October, 1934, levied upon said bank accounts in the manner described in

the complainant's Bill of Complaint, in an effort to collect either: admission taxes which under the Revenue Acts of 1926 and 1932 are imposed on the individuals buying admissions, or, penalties for refusing to collect such tax.

18. During the year 1932 the complainant, through one of its said branches, the School of Technology, filed an admissions tax return and paid a tax representing 10% of admissions collected during a portion of the year 1932, and thereafter filed claim for refund on behalf of complainant with the Treasury Department of the United States.

19. Said claim for refund was denied by the Commissioner of Internal Revenue on the ground, among others, that the complainant's said branch was not the taxpayer on whom the tax was imposed by law.

Respectfully submitted,

HAROLD HIRSCH & MARION SMITH,

M. E. KILPATRICK,

Attorneys for Complainant.

Filed Sept. 15, 1936.

TITLE OMITTED.

COMPLAINANT'S REQUEST FOR CONCLUSIONS OF LAW

Complainant, through its counsel, respectfully requests the Court to make the following conclusions of law:

1. Complainant, Regents of the University System of Georgia, is a governmental corporation created by the State of Georgia by public laws as an agency and instrumentality of the State to carry on for the State the University System of the State and for no other purposes.

2. The governing board of said complainant, to-wit: Board of Regents of the University System of Georgia, is a department of government of the State of Georgia, and the members of said board are public officers of the State of Georgia.

3. The title to all property of every nature whatever and of all funds, including funds of the Athletic Association or any of its branches of the said Regents of the University System of Georgia are held by said complainant as an agent and instrumentality of the State of Georgia, and are public funds of the State of Georgia.

4. The complainant was given, by said Act, full authority to adopt and approve such rules and regulations and courses of study in connection therewith in its educational program as it saw fit.

5. The admissions to athletic contests collected by the two said branches of the complainant during 1934 were and are the funds of the complainant, a branch of the government of the State of Georgia.

6. The complainant nor either of its said two branches nor any department of either branch, during the year 1934, collected any taxes for the Federal Government, and all of the funds collected by way of admissions belong to the complainant.

7. The program of education of the two said branches of the University of Georgia, including the physical education program, including intercollegiate athletics at which admissions were charged, was an essential governmental function of the State of Georgia.

8. That the complainant nor its two branches nor any department thereof, is liable for any Federal admissions tax or penalty for failure and refusal to collect any such tax.

9. That no taxes are due by the persons paying such admissions, in that the same would constitute an interference with and a burden upon the said governmental function of the State of Georgia.

10. Complainant is entitled to the injunction prayed for.

Respectfully submitted,

HAROLD HIRSCH & MARION SMITH,
M. E. KILPATRICK,
Attorneys for Complainant.

Filed Sept. 15, 1936.

TITLE OMITTED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above case having come on for hearing upon its merits and evidence having been introduced, arguments of counsel had and briefs filed, the Court now finds:

FINDINGS OF FACTS.

1. Complainant is a public corporation and an instrumentality of the State of Georgia, incorporated by an act of the Legislature of Georgia in the year 1931. The University of Georgia and the School of Technology are branches of complainant, so made by said Act, each of which colleges is and at all times herein mentioned has been operated under the supervision and control of complainant.

2. Defendant W. E. Page was appointed United States Collector of Internal Revenue for the Collection District of Georgia on June 20, 1933, and ever since that date has been and now is the duly appointed, qualified and acting Collector of Internal Revenue for said District.

3. During the times alleged in the bill of complaint there was maintained at the University of Georgia and at said School of Technology, athletic associations, incorporated by law, which was known as University of Georgia Athletic Association and Georgia Tech Athletic Association respectively, except that the Georgia Tech Athletic Association operated

as an unincorporated association prior to March 8th, 1934, the date of its incorporation. Both associations have always functioned through a Governing Board composed of an equal number of faculty members and alumni of the respective colleges. These associations have control of physical education and athletic games at said colleges, including intercollegiate contests in football, to which spectators are admitted upon the payment of admission charges of varying amounts.

4. All health and athletic programs of the said two colleges were, during the year 1934, adopted and supervised by the faculties of said colleges, and approved by each of their Presidents, and were, in turn, approved by complainant.

5. The health and athletic programs of the colleges included both intermural and intercollegiate Athletics; and approximately eighty per cent. of the male students in each college engaged in some manner in the program of physical education during the year 1934. Approximately thirty per cent. of them engaged in intercollegiate athletics.

6. At both colleges participation in the physical education is required of all students that cannot qualify for R. O. T. C. training.

7. The physical education program also includes the women students, there being thirty courses in physical education for women.

8. The expenses of physical education and athletic

programs at each college are supported in large measure from admission charges to athletic contests. In addition, a small student's fee is collected from each student, which is used for such purpose. The entire expenses of physical education and athletic programs in the two colleges are met by said admission charges and student's fees.

9. During and since the year 1934, each ticket of admission to such athletic events at the University of Georgia, contained the following notice:

> "The University of Georgia, being an instrumentality of the government of the State of Georgia, contends that it is not liable for any admission tax. The amount stated as a tax is so stated because the University is required to do so by Treasury regulations pending a decision as to its liability in this respect. This amount is collected by the University as a part of the admission and will be retained as such unless it is finally determined that the University is itself liable for the tax."

The same notice appeared on all the tickets of admission to athletic contests at the School of Technology, except the name "School of Technology" is inserted in lieu of the name "University of Georgia."

10. Neither complainant nor either of said athletic associations, or any other of complainant's branches or instrumentalities made any returns to defendant of the amounts stated on the admission tickets as a tax, but both associations kept all amounts so collected separate and apart from all other funds and deposited them to their respective accounts, the amount

so collected by the University of Georgia Athletic Association, to-wit: $895.37, being deposited in the Citizens & Southern National Bank in Athens, Georgia, and the amount collected by Georgia Tech Athletic Association, $3,914.63, being placed in the First National Bank, in Atlanta, Ga.

11. No part of either of these sums has been paid to defendant or to the United States.

12. Upon failure of complainant and its branches and instrumentalities to make returns and pay taxes on said admissions, defendant made returns of same, claimed as due and owing for the months of September and October 1934, amounting to $895.37 from the University of Georgia Athletic Association, and amounting to $3,914.63 from Georgia Tech Athletic Association. Assessments of said amounts were thereafter made by defendant.

13. Upon failure of complainant and its branches and instrumentalities, including the two athletic associations, to pay, upon demand of defendant, the said amounts claimed as taxes, defendant issued warrants for distraint. One of these, relating to the University of Georgia Athletic Association, was served on October 24, 1934, upon Charles E. Martin as an officer of said association, as were also two notices and demands for payment by him or the University of Georgia Athletic Association of the sum of $895.37 for admission taxes for the months of September and October, 1934. On the same date defendant also levied upon the money and bank deposit of said association in the Citizens & Southern National Bank. The Bank failed

and refused to deliver said $895.37 to defendant, although it held this amount of funds belonging to said association. The other warrant, relating to the Georgia Tech Athletic Association, was served, October 25, 1934, upon Dr. A. H. Armstrong as an officer of said association, as were also two notices and demands for the payment by him or said association of the sum of $3,914.63 for admission taxes alleged to be due on account of admissions collected during the months of September and October 1934. On the same day defendant levied upon the money and bank deposit of said association in the First National Bank of Atlanta and demanded payment and delivery of said $3,914.63. The bank failed and refused to deliver same to defendant although it had the amount on deposit to the credit of the association.

14. The ten per cent. of the admissions collected by the two athletic associations placed in the bank accounts maintained by said associations respectively, but nominally in the name of Charles E. Martin, Trustee, University of Georgia Athletic Association, University of Georgia Department of Athletics, and Athletic Association of University of Georgia; and Georgia Tech Athletic Association.

15. During the year 1932 the Georgia Tech Athletic Association filed an admission tax return, verified by Floyd Field, Treasurer, and paid a tax representing ten per cent. of admissions collected during a portion of the year 1932. Thereafter the association filed claim for refund on behalf of complainant with the Treasury Department of the United States. This claim for refund was denied.

CONCLUSIONS OF LAW

At the first trial this Court held, in sustaining the motion to dismiss, that the allegations of the petition did not set forth a cause of action and did not show that the conduct of the athletic games in questions by complainant, through the agency of the two athletic associations, was an operation of the State essential to the execution of its governmental functions, but on the contrary showed that same was not such governmental function, and that the tax in question was valid and that the suit should be dismissed.

Upon appeal the decree was reversed and the Circuit Court of Appeals held that "We are of opinion that complainant has stated a case for equitable relief" and directed that an interlocutory injunction issue and the case be heard on its mreits. (Regents of the University System of Georgia v. Page, 81 F(2nd) 577.)

Upon the trial on the merits, evidence was introduced which I find fully sustained the allegations of the petition.

As I construe the opinion of the Circuit Court of Appeals, the facts proved being the same as those alleged and only expanded to establish the allegations in greater detail, it requires a finding by this Court in favor of complainant and against the asserted claim of liability for the tax or obligation to collect it. While the Circuit Court of Appeals stated in its opinion that a ruling on this question would be premature, nevertheless I construe the opinion to mean that, if

the facts alleged in the petition were proved, a decision to the above effect must follow and an injunction issue.

Therefore, upon authority of the decision of the Circuit Court of Appeals, which I must, of course, follow, I file these conclusions of law:

1. Complainant, though a distinct legal entity, is a governmental corporation, created by the State of Georgia for the purpose of having supervision of the public higher institutions of learning in the State and to conduct the University System of the State.

2. The title to all property of every nature whatever and all funds held by complainant, directly or by its agents and instrumentalities, including the funds of said athletic associations, are held by complainant as an instrumentality of the State of Georgia and are the property and funds of the State of Georgia.

3. Complainant was given by the Act creating it, full authority to establish and approve such rules and regulations and courses of study in its educational program as it saw fit.

4. The adoption, direction and supervision by complainant, acting directly or through its agents and instrumentalities, of the program of education at the two branches of the University System of Georgia, the University of Georgia and the Georgia School of Technology, including the promotion of physical training as an intergral part of its educational activities, including intercollegiate athletic contests

such as football, and the collection of admission fees at games when admission fees were charged, were, under the decision of the Circuit Court of Appeals in this case, the exercise of an essential governmental function of the State of Georgia; and there existed no liability upon it or its agents or instrumentalities for any Federal admission tax or penalty for failure and refusal to collect any such tax, and an injunction should issue restraining the defendant from attempting to collect the alleged taxes, debt, or penalties, except by due proceedings in a court of competent jurisdiction.

Let a decree in conformity with the above findings be prepared and submitted to the Court.

This January 6th, 1937.

E. MARVIN UNDERWOOD,
United States District Judge.

Filed Jan. 6, 1937.

TITLE OMITTED.

FINAL DECREE

Pursuant to the opinion and findings herein, that there is no liability upon complainant or its agents or instrumentalities for any Federal admission tax or penalty for failure and refusal to collect any such tax, IT IS CONSIDERED, ORDERED, ADJUDGED and DECREED that the defendant, his agents,

deputies, servants and employees, be and they are hereby permanently enjoined and restrained from further proceedings under levies and warrants for distraint referred to in the Bill of Complaint.

IT IS FURTHER ORDERED and DECREED that said levies and warrants for distraint be and they are hereby cancelled, and the liens thereby created are likewise cancelled.

This the 14th day of January, 1937.

E. MARVIN UNDERWOOD,
United States District Judge.

Filed Jan. 14, 1937.

TITLE OMITTED.

MOTION TO REPRODUCE PARTS OF THE TESTIMONY IN THE VERBATIM FORM

Comes now W. E. Page, Collector of Internal Revenue, the above named defendant, by Lawrence S. Camp, United States Attorney for the Northern District of Georgia, and M. Neil Andrews, Assistant United States Attorney for said District, his solicitors of record, and respectfully moves the Court to direct that parts of the Statement of Evidence prepared by defendant and lodged with the Clerk of this Court this day, which show a reproduction of the testimony in the exact words of the witnesses in question and answer form, shall be reproduced in

the exact words as such witnesses in question and answer form in the Statement of Evidence to be filed in connection with the appeal this day allowed in the above entitled cause, for the reason that the parts of said Statement which show a reproduction of the testimony in the exact words of the witnesses in question and answer form were and are desired by the defendant, and are necessary to accurately reflect what occured and for a proper understanding of the questions presented by the appeal.

Dated this 3rd day of April, 1937.

LAWRENCE S. CAMP,
United States Attorney.

M. NEIL ANDREWS,
Assistant United States Attorney.

Filed April 13, 1937.

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TITLE OMITTED.

ORDER DIRECTING THE REPRODUCTION OF PARTS OF THE TESTIMONY IN VERBATIM FORM

On Motion of W. E. Page, Collector of Internal Revenue, defendant and appellant in the above entitled cause, and in view of the nature and character of the testimony,

IT IS HEREBY ORDERED and directed that, in making up the record on appeal, that part of the testimony of the Witnesses H. J. Stegeman, Charles E. Martin, Dr. A. H. Armstrong, Dr. M. L. Brittain, and Dr. S. V. Sanford, shown in the Statement of Evidence prepared by the defendant and lodged with the Clerk of this Court, which show a reproduction of the testimony of the witnesses in the exact words of such witnesses in question and answer form, shall be so reproduced in the exact words of the witnesses in the form of questions and answers as set forth in said Statement of Evidence.

Dated this 13th day of April, 1937.

E MARVIN UNDERWOOD,
District Judge.

Filed April 13, 1937.

(Title Omitted)

STATEMENT OF EVIDENCE

BE IT REMEMBERED that the above entitled cause came on regularly for trial before the above entitled Court, sitting in Equity, commencing on the 14th day of September, 1936, and ending on the 16th day of September, 1936, upon the issues formed by the bill of complaint, and amendments thereto, and the answer thereto, Marion Smith, Esquire, and M. E. Kilpatrick, Esquire, appearing as solicitors for complainant, and Lawrence S. Camp, Esquire, United States Attorney, M. Neil Andrews, Esquire, Assistant United States Attorney, and M. H. Eustace, Esquire, Special Assistant to the Attorney General, appearing as solicitors for defendant.

COMPLAINANT'S CASE

H. J. STEGERMAN, a witness called on behalf of complainant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KILPATRICK:

My name is H. J. Stegerman. In the University of Georgia I hold the positions of Dean of Men Students and Director of Athletics. I have held the position of Dean of Men about eight years, and the position of Director of Athletics about ten years. As head of athletics I have charge at the University of intercollegiate athletics, intra-mural sports, and physical education branches of activities. The com-

plete athletic activities at the University of Georgia are as follows: The University conducts intercollegiate athletics and intra-mural sports in such branches as football, baseball, golf, tennis, swimming, cross country track, boxing, and a few other similar sports. Other than intercollegiate athletics, the athletic program consists of intramural athletics and physical education. By intramural athletics is meant athletics for students within the University separate from intercollegiate athletics. As examples of intramural activities, students are formed in groups along the line of fraternity teams or dormitory teams, class teams or teams from the military organizations, which teams play each other in whatever sport is current during that season. With respect to other forms of physical education at the University, there are required classes which every man must take, and certain courses are required by University rules to be taken by them. We made out a record of the number of students participating in the athletic program at the University for 1934, which we do for every year. I have a copy of the report with me. During the year 1934, approximately thirty per cent of male students at the University engaged in intercollegiate athletics.

During the same year, approximately seventy-five per cent of the male students of the University engaged in the intramural part of the athletic program. Inter-fraternity activities are included within the term "intramural." From the standpoint of numbers, approximately 1,858 students engaged in intramural athletics in 1934. That was approximately

eighty per cent of the student body. The athletic program at the University of Georgia is adopted by the faculty and presented to the Board of Regents for approval. The faculty had a great number of rules covering athletic activities in 1934. Those rules were published. The pamphlet which you are handing me (Plaintiff's Exhibit 1) is a set of regulations for the guidance of undergraduate students for the year 1935-36. We had a similar set of rules for 1934, as we have every year. There were very slight changes in the rules year by year. That set of rules was adopted by the faculty of the University of Georgia.

I am on the faculty of the University of Georgia in Athens. In 1934, the football instructors at Georgia were Mr. Mehre and Mr. Enright, and Mr. Twomey. As an assistant instructor we had a Mr. Baskin. There were several other instructors in the general athletic program which I have outlined. Those instructors or so-called football coaches, were members of the faculty at that time. They were members of the faculty in the University of Georgia in their capacity as football coaches and as instructors in the Department of Physical Education, four members. They had regular classes in the course of Physical Education. These classes were regularly attended. As to how often these classes were held, the Junior College classes met five days a week, and six days for the Senior, exactly the same number of classes to meet as approved by the Board of Regents. At these regular classes, they teach methods and practice and rules and theory for coaching sports for

high school coaching, and for men planning going into teaching and coaching positions. Classes were selected by the boys registered, or they were assigned to them by the Registrar of the University, if they desired to take that course, depending upon the degree for which they were studying. They do not give any football or athletic degree. The schedule in education, for those who major in Physical Education, invited men, who desire to teach, and it entitled the men to teach in our state high schools. The size of a class is given in the catalogue. The catalogue shows the entire list. It does not show the number of students, but the description of courses by numbers.

BY THE COURT: How many pupils followed those courses?

A. The attendance was between 42 and 45. That was about the general average.

Q. Were they confined to football players?

A. No, sir; any student that desired to take those courses.

The intercollegiate program does not include the girls. So far as girls are concerned, the School of Physical Education has another department for women. That composed the type of athletics such as outdoor hockey, swimming, horseback riding, rifle shooting, tennis and slightly more moderate sports. So far as male students are concerned, there is a requisite for taking some form of physical education

order to qualify for R.O.T.C. training. No stu-
nt can be graduated from the University without
o years of physical education, if he does not take
litary training. That physical education is in-
ded in the physical education program which I
ve conducted. These courses are set out in the
letin of the University of Georgia. The Athletic
ogram of education starts with page 218 and con-
ues through part of 220. Plaintiff's Exhibit 2 is
general catalogue published by the University of
orgia faculty for 1934.

On pages 324 and 327 are the rules which the
iversity laid down for eligibility for competition
athletics. A student cannot engage in intercol-
iate athletics without the approval of the faculty
mmittee and Dean of the University. A student
not permitted to engage in athletics unless he has
ertain grade in his work. The University require-
nt is that he must have a passing grade in two
urses of the three he is required to carry. The
letic faculty committee in 1934 was a committee
ointed by the President of seven members of the
ulty. They were Professor Payne, Professor T.
McWhorter, Professor W. D. Hooper, Professor
W. Scott, and myself. In the intercollegiate ath-
c contests admissions were charged to persons
ending those games in 1934. The business man-
er of the Athletic Association at the University
lected those admissions.

The Athletic Association is an organization,
ich is formed—it is a group of Directors, which is
ten together, organized—for the purpose of bor-

rowing money to build our physical plant, and for arousing interest in athletics, and interest in physical education.

The President of the University fixes the salaries of the physical education instructors at the University of Georgia.

BY THE COURT: Is the Athletic Association a corporation? A. Yes, sir.

MR. SMITH: They have a charter and by-laws.

In fixing the admissions to those games and determining the charges, we are required by the Board of Regents to make out a budget every year, outlining our probable expenses. Then we more or less estimate our possible receipts for the year and base our admission charges on that estimate. Those proceeds from admissions are used for the maintenance of the physical plant. To illustrate: Within the last number of years, we have built a large stadium costing a considerable amount of money which belongs to the University. We have built two gymnasiums, a series of tennis courts, and a baseball field. In general it is building and playing fields for students. The salaries to the physical education instructors comes partly from the University and partly from the Athletic Association.

That is, part is appropriated by the legislature and part from the University. At one time the athletic fund was used to pay salaries of professors in other departments. At one time, when the Athletic Association had a surplus, it went into the general

funds of the University, when the University was short of money. A very large amount was taken over one year.

BY THE COURT: Was that taken over as a loan or credit or a payment to be made by the University to the Athletic Association?

A. Supposedly a loan, but it has never been repaid, and there is no possible possibility of it ever being repaid. It was though as a loan from the Athletic Association. It was more in the form of a gift by the Athletic Association. There were no papers executed, and no agreement made about it.

Those funds are not used for any other purpose of the University of Georgia besides salaries and equipment, and salaries in other depattments. Some of those funds were used for conducting general student meetings or student dances, for the Athletic Association provides all facilities for holding University social functions, which is one item.

BY THE COURT: Are those dances and other social entertainments free to the students, or do they pay admission?

A. They pay a nominal admission.

Q. How much of the cost of those entertainments do the paid admissions cover?

A. I would say probably two-thirds of the cost.

Q. Are the contributions from the Athletic Asso-

ciation in the form of a gift or loan?

A. They are in the form of buildings and services. They don't contribute any money. We contribute our physical plant, and give them all the labor necessary.

The funds with which medical supplies are taken care of come partly from the University budget, partly from the fee which is charged to students as an infirmary fee and from payments by students, additional fees of students who get sick, and from gifts of equipment that have been made at different times. The medical supplies that we use and the surgical supplies, such as diathermy machines and X-ray machines, go to the University after the football season is over. The funds come from Athletic Association funds.

The Athletic Association receives its funds, on which it runs, other than admissions, partly from the tuition paid in. I cannot tell how much. A fee is charged each student, which is allocated by the President of the University to certain activities, and a share of that is allocated to us for use in running the athletic program. I mean the athletic department. What I have testified to applies now as well as in 1934.

The Exhibits F and G in the bill of complaint are a list and description of the courses given both during the year and during the summer session at the University. Those are for the year of 1933-34. The next Bulletin found in Exhibit G is a list of courses

given by the Peabody School of Education. Those courses were first adopted by the Curriculum Committee of the University, then by the faculty, and approved by the Board of Regents. Mr. Mehre, head coach of the football team, instructs in this department. Other coaches instructing in this department are Mr. Enright, Mr. Smith, and Mr. McAllister. I have been interested as an instructor or in charge of athletics for about twenty-two years. I was on the committee that adopted or approved this athletic program which I have described. When I refer to the University, my testimony relates to the branch at Athens known as the University of Georgia.

CROSS-EXAMINATION BY MR. EUSTACE:

I testified that my present position is dean of men students. I have served in that capacity about six or seven years. The other position I held in the University of Georgia is Director of Athletics. I am also a member of the Board of Directors of the Athletic Association. I was not one of the original incorporators of that organization. It was reincorporated in 1928. At the time it was reincorporated, I was one of the incorporators.

I have testified that I was a member of the Board of Directors of the University of Georgia Athletic Association. I have occupied that position more than ten years. As to whether the Board of Directors of this Athletic Association holds meetings from time to time, and transacts the business of the Association at the meetings of the Board of Direc-

tors—there is very little business for them to transact. They keep minutes. As to the football games which were played between the students attending the University of Georgia and students of other schools during September and October, 1934, I would not be very accurate. I would have to look up the record or the schedules here. I can probably give you seven out of the ten. There were ten games played. Admissions were charged to all of those games. I have a record of the total amount of receipts that accrued from those games.

BY THE COURT: Has an audit been made of the Athletic Association?

A. Yes sir. It is made every year by the State Auditor.

Q. Does that show all funds received from athletic games, in which the University team participated?

A. Yes sir; receipts of every kind.

Q. Is that here?

A. I think it is here.

An audit is made every year by the State Auditor from the State Capitol, of the receipts and disbursements of the Athletic Association. An audit is made by the University Auditor every year for a different fiscal year, so we have two annual audits. The period covered by the audit made by the State Auditor is from September 1 to August 31. The period covered

by the faculty audit is, I think, from January 1 to December 31. We do not have semi-annual audits. I think that the audit made by the State Auditor for the period ending August 31, 1935, covers the period from September 1, 1934, to August 31, 1935. I do not know how long the State Auditor has been making audits of the affairs of the University of Georgia Athletic Association. I think it is required that he do so every year. I do not know whether or not the audit, "Defendant's Exhibit 1," and being the audit for the period ending August 31, 1935, is the first audit made by the State Auditor of those funds. My impression is that it has been done every year. I don't know whether this audit made for the last fiscal year by the State Auditor is the first one made.

Q. What credit towards a degree in the department of Athletics is given to a student for his participation in intercollegiate football?

A. Only the credit required to graduate, if he takes that course. There is a great variety of courses given, in which intercollegiate athletics are separated into different sports for the course.

Q. I understand your testimony to be that a student, who participates in intercollegiate football, by reason of that fact gets credit towards a degree for graduation?

A. No sir.

Q. Then no credit is given for participation in sports?

A. Under certain condition, yes sir.

Football is not required as a prerequisite to graduation and obtaining a degree in the department of Physical Education in the University of Georgia. A member of the so-called Varsity team, who participates in intercollegiate football might receive credit by reason of that participation towards his degree. I mean if he needs for graduation the course in Physical Education, then we cannot assign him to football, and get credit for it, but other men may be taking those courses in different departments, and therefore not eligible to get credit for it by playing football.

Football is not one of the required courses towards a degree in the University. It is participated in merely as a voluntary act on the part of the student.

BY THE COURT: I don't understand how he gets credit for his football playing.

A. Students cannot graduate without credit for two years of work in either military or physical education. Take a student, who on account of defective eye sight cannot take military training, and he is still physically fit to play football. If physically fit, he can play football for two years, and get the same amount of credit as if he had taken military training for two years.

If a student participates in military training during two years of his college course, he fulfills all the requirements necessary for graduation in the department of Physical Education, so far as the

two years' work is concerned.

If he played football, I mean that that is a substitute for the work he might do in the military department, if he is rejected for military training as a result of his physical examination. He would have to be rejected.

Q. Unless he can qualify as a student in the military department, or in some other physical activity, he is not entitled to any credits by reason of his participation in football?

A. Yes sir.

BY THE COURT: Does every student have to take military training?

A. All except a small group, who take the Pharmacy course. Those are the only ones exempt from physical education.

Q. Do all your football players take military training?

A. Unless they are rejected for defects.

Q. What percentage of them are rejected?

A. Between 80 and 140 a year.

Q. How many on your squad?

A. About 135 to 160.

Q. Practically all of them are rejected for mili-

tary training?

A. No. I mean out of the student body between 80 and 140.

Q. How many of the football players are rejected for military training.

A. Probably 10%. The records would show.

Q. The University official record would show that?

A. Yes sir.

Our records show how many football players actually carry out the complete course of military training. So far my testimony has been directed to those, who participate or who elect physical education as the course they are pursuing at the University. It is true that members of the Varsity Squad come from other departments of the University as well as the Department of Physical Education, some from the Law School, some from the Medical School, and some from the College of Arts and Sciences.

Between 5 and 10 per cent of the Varsity Squad in 1934 was made up of students from the department of Physical Education. I would think not more than 10%. And physical education is required as a requirement for graduation in other departments except that of Physical Education, it is required in all departments of the University, the law department as well as others.

Q. What is there about the Department of Physical Education as affects participation in athletic sports that is any different from any other department in the University?

A. The only difference is that, if it were not for receipts from athletics, there would be none. No appropriation is made by the State Legislature to go to the Department of Physical Education. If athletic contests were not carried on, we would have no department of Physical Education.

BY THE COURT: I understood you to say a while ago that the State appropriated funds, that are used for athletics at the University ?

A. No sir. That was in answer to a question about salaries. There is one salary appropriated, which amounts to $1200.00, the only appropriation made by the State for one purpose.

MR. SMITH: The State appropriation is by Act of the General Assembly, which is not a subject matter of testimony, but I can say that the State of Georgia does not segregate that appropriation for that purpose. It is appropriated in a lump sum for the University, and it is not appropriated for the department of Greek, Latin, Mathematics, or anything else. There is one lump sum appropriated.

Other athletic activities besides football which were carried on in the fall of 1934, to which admissions were charged were basketball, baseball, boxing, golf, and track. Those activities in some form or other extended throughout the entire year, ex-

cept the Summer session. The athletic fee that is required of all students at the University is approximately $10 a year. That is the amount that was charged in the Fall of 1934. The proceeds of those fees are used in the general operating fund of the Athletic Department

BY THE COURT: You stated the Athletic Department. Do you know of any difference between the activities of the Athletic Department and the Athletic Association?

A. No sir, I do not.

The Athletic Association is not a corporate entity, which is charged with the athletic activities. It has no jurisdiction over the athletic interests. I don't consider that it has any jurisdiction over football games and athletic activities.

BY THE COURT: Does this ten dollars, which each student pays, go to the Athletic Association?

A. Yes sir.

The student gets for that free use of all our gymnasiums, free hot and cold water for baths, free swimming pools, and towels, use of playing fields, and free admission to all games played on the University campus of all sorts.

That is to all games, for which charges are made. Students are not required to pay for football games, and no fees for basketball games, baseball games, boxing contests, golf or track. That fee entitles him

to admission to all on the campus. The number of contests held during a year, to which the student is admitted by reason of payment of that fee, I would say is in the neighborhood of 50 events, probably greater.

The athletic fee of ten dollars has never been allocated, those admissions are one of the benefits included.

Q. If the ten dollar athletic fee was devoted exclusively to charges for admission, to which the student would have to pay admission for athletic activities, but which he is entitled to attend free, as it is, he would be paying about five cents admission to each game?

A. I don't know how much it would be. It would be very little, just a nominal amount.

Besides coaching football, the football coach teaches physical education, courses in the theory and practice of coaching football. That is all in the Department of Physical Education. He does not devote any of his time to the teaching of any subject outside of that Department. The coach in the Fall of 1934 was H. J. Mehre. All of his salary is paid out of the proceeds of the funds of the Athletic Association.

BY THE COURT: What is his salary?

A. I think his salary is $7200.00; I am not sure. I think it is $7600.00.

Q. Does that represent all that he receives?

A. Yes sir.

Q. That is his entire compensation from all sources?

A. Yes, sir.

Q. What is the salary of the President of the University?

A. I don't know. I am not able to say.

Q. What does the Dean of Men get?

A. $2500.00.

Q. What does the Chancellor get?

A. I don't know.

MR. SMITH: I think possibly an erroneous impression is being left on your Honor's mind. He gets another salary besides as Dean of Men.

BY THE COURT: What is the other salary for?

A. Director of Athletics in the Athletic Department.

Q. How much is that?

A. $3100.00.

Q. Do you know what full professors and heads

of other departments in the University receive?

A. No sir, I do not.

Q. The football coach is the highest paid officer in our State University, is he not?

A. I don't know. I am not acquainted with the other salaries.

The State audit shows the coach's salary. The audit of the University would show the Professors' salaries I think.

The amount shown in the audit, as the coach's salary is $7632.50, it should be $7600.00. I don't know where the $32.50 comes from. I do not know whether there is any man on the Faculty of the University of Georgia, that receives a salary of that amount, I don't know about the other salaries.

BY THE COURT: How many other coaches are there?

A.Three of them.

Q. Do you know what their salaries are?

A. One gets $4200.00, and the next one $3,000.00. and the next one $2,400.00.

None of those were student coaches. I don't know exactly the total enrollment of the University of Georgia for 1934. I guess about 2400 students. The audit shows receipts from athletic fees of $23,214.29,

that would represent an enrollment of 2300 students or a little more. That includes men and women. The women are required to pay the $10.00 athletic fee. That in turn is turned over to the Athletic Association. The Athletic Association does not have any other income aside from the athletic fee and the receipts for admissions to games. That constitutes the entire income. The audit shows that for the year 1934, ending August 31, 1935, the Athletic Association received a total of $71,323.27 from football games. That would be correct. That is fairly representative of the amounts received from year to year from football games. That is about an average.

Q. So that the $71,000.00 added to the $23,000.00 student athletic fees would approximate $100,000.00 in receipts, which went into the funds of the athletic Association in the year 1934?

A. I don't know the audit by heart. It would be shown there.

Q. Does that seem to you to be about right?

A. That is a little larger than the average. I would guess that $77,000.00 is closer to the average from all sources from year to year. I know what the funds are expended for that come from those sources, other than payment of salary of the coach.

C. W. Jones is a trainer of football, and coach of swimming and boxing departments. He is the man testified to a moment ago as having a salary from the University. His salary is given as $2762.70.

BY THE COURT: Are their salaries fixed or are they a percentage of receipts?

A. No sir; fixed.

Q. Then how did he happen to get an odd 72 cents?

A. Salaries at one time were about 10%, which divided by 12 over monthly payments would make odd amounts.

G. W. Paulkman is an official who works in football games. He is not one of the students. He was paid $79.60. I would imagine that that is for acting as head linesman for the Georgia-Alabama game that year, that is one of the four officials engaged to handle that game.

We have the same official of the same type for each game you play. The audit shows an amount of $3150.00 paid to H. J. Stegeman, Director of Athletics. I am the one that receives that. That is the amount I receive from the Athletic Association. In the tabulated statement of receipts and disbursements listed under "Miscellaneous" is an item of "Students' room and board $8,057.45." I don't know what that was for. That is not an expenditure of the Athletic Association. It is a gift that the University makes to the general scholarship fund, which is disbursed to any student, who receives any benefit from the University. I would imagine there were at least 400 students in the fall of 1934 eligible for this.

Q. What would be the maximum amount that any one student would receive?

A. I think the maximum amount any student can receive on a loan is for the amount of his tuition, which is $120.00. The tuition for all students is the same. There were no gratuities made by the Athletic Association to any of the students. This $8,057.45 represents a sort of scholarship fund, which is made available to certain students. It represents the part that the Athletic Association gives to the General Scholarship Fund, which is administered by the University.

It does not represent the entire scholarship fund, that 400 students might be eligible for.

BY THE COURT: What proportion of that amount goes to football players?

A. I doubt if I could tell you.

Q. How many scholarships did you have on the football team?

A. I would guess, I would think, about 30; probably not that many on the football team; 30 in the entire department; or probably two dozen or more.

There is a record showing that. That is kept by the Faculty Committee, that awarded those scholarships. The University audit shows that. It shows what particular students got it and how much.

Q. The Athletic Association does not know who they were?

A. Yes.

Q. Let's have that information now.

A. We are not interested in who gets it. That is our share, that we pay into the General Scholarship Fund. That scholarship fund is handled by the Treasurer of the University.

Q. How does that scholarship contribution compare to the scholarships given to athletes?

A. That is the total amount given by the Athletic Association that year. I think there are enough athletes to consume that entire amount. The scholarships from the Athletic Association were given to athletes. The tuition is not the same for a student, who is a resident of the State of Georgia, as it is for a student from the outside, there is a non-resident fee.

A non-resident pays $100.00 additional; $220.00 plus his fees. If we had a member of the football squad, that came from outside the State of Georgia, his scholarship might or might not amount to $220.00.

Q. It would depend on the kind of deal you could make with him, when you induce him to come and play on your team?

A. No sir; I would not say that. Those matters are handled by a Faculty Committee. The Faculty Committee makes all awards made to any students during the year.

Q. Then, when you go out scouting for material for your football team for the current school year, you know, when you approach a student in another State, what inducement you can offer him to come in and play on your team?

A. I never do approach a student. They probably have scouts who do go out for prospective football material, but I don't do any of that myself.

Q. Who would have charge of making recommendations to the Faculty Committee with respect to the amount to be allowed in the way of a scholarship?

A. That is handled by the Faculty Committee themselves. No recommendations are made by coaches or others, with respect to those awards. Any member of the Faculty can make a recommendation as to who is to be put on that list, but the amount to be awarded to each student is governed by the amount available from any source. I am not able at this time to give you a list of the names of the members of the Varsity Squad in the Fall of 1934. Such a list is available. I think that can be produced, it is probably in our office in Athens. The easiest way to get it would be out of one of the football programs that year.

BY THE COURT: Do you recall approximately or definitely the members of the football squad in 1934, who held scholarships?

A. No sir; I do not.

Q. Can you name some of them that you happen to know personally?

A. I would have to get that from the office of the Treasurer of the University.

Q. You keep pretty closely in touch with the Athletic Association?

A. Yes sir.

Q. You keep pretty closely in touch with those on the football squad?

A. Yes sir.

Q. You know them pretty well?

A. Yes sir.

Q. Give those you remember.

MR. SMITH: If it pleases the Court, I will undertake to give counsel the full records for 1934. That is available. I will get the full records, his full records, each scholarship he handled. Prof. Payne of the University of Georgia has that, or I presume he has.

(Witness continuing) That is a tremendous list, because it includes hundreds and hundreds of students.

THE COURT: He said he recalled some. He might say those he recalls.

(Witness continuing) I know a boy named Joh Bond was one. He is from Toccoa, Georgia. Anothe was George Chapman from Winder, Georgia; don't recall the members of the team well enoug year by year to give you any more. I am quite sur these two played. These men had scholarships. The had been students at the University of Georgia fou years. This was their last year at school.

I do not have anything to do with the sale o tickets to football games. I do not have anything t do with the handling of the money, except the di bursements. All disbursements are made on m order.

Those disbursements, which are made on my orde are not made on checks, which I sign on bank de posits. They are made on requisitions given to ou Treasurer. The method, by which the payment o disbursement is made is that the Treasurer recei ing a requisition signed by me pays the amount fo whatever purpose is designated on the requisitio That is the Treasurer of the Athletic Associatio He has the custody of all funds derived from admi sions as well as athletic fees. Those funds are de posited in bank. They were kept separate from othe funds, from University funds, not mingled wit them in any way, they were kept separate in 193

There was a change made in the method of han ling those funds during the summer of 1936.

Prior to that time they were always kept separat

Q. Do you know anything about the amount tha

was collected on these tickets as federal tax, admissions tax?

A. I do not. I know how all of the total amount collected was handled.

MR. SMITH: The question is objectionable because it assumes it was collected as Federal tax. Can't we have a stipulation as to those tickets, and as to the stamp on the back of them?

MR. EUSTACE: The ticket will show for itself.

MR. SMITH: The tickets will show that all of them had that stamp on them, and we can decide whether it was collected as a tax or not.

I am the one, who had the say as to the disposal of all the funds, that belonged to the Athletic Association. I was the one, who handled it. I do not have final approval of it except in routine matters. All expenditures had to go through my hands. We have a stadium at the University of Georgia. Its seating capacity is 30,000. It was erected in 1927, 1928, and 1929. It was not built from surplus funds in the hands of the Athletic Association. The money was borrowed and is being repaid from proceeds of funds of the Athletic Association.

BY THE COURT: Was that fund borrowed from some private industry or individual or from a State fund?

A. It was borrowed from a bank.

The Athletic Association did not issue bonds or give its note to represent that loan. It had a group of alumni to endorse the notes up to a certain amount each, and the notes were signed by the Athletic Association, and endorsed by some private individuals. All of the money, that went into the construction of the stadium, was borrowed from that source. It was a loan of $180,000.00, I believe I am right. All of it has been repaid except I think about $28,000.00. That was within the period since 1929.

BY THE COURT: Is the stadium on property owned by the State of Georgia, or property owned by the Athletic Association?

A. The stadium is on property of the Regents of the University. They own it as Agents of the State. All property on the campus belongs to the Board of Regents. The loan was made but the property was not put up as security for the loan, it could not be.

I am not sure the title to the real estate is in the Board of Regents and not in the State of Georgia. It is either one or the other. It is not the Athletic Association. Whether the Regents or the State I don't know.

BY THE COURT: The stadium and the property on which it is located, belongs exclusively to the State of Georgia without any liens or outstanding encumbrances whatever?

A. Yes sir.

I might be mistaken as to that title being in the

State of Georgia itself, or the Regents. It is either one or the other.

Our business manager fixes the price, at which we sell football tickets to any particular game we play, in fact the Chairman, and myself. They are all members of the Board of Directors of the Athletic Association. During the summer the tickets are ordered about three months in advance, and prices are fixed in the early part of the summer, and prices approved by the Faculty Committee, and, when thus approved, our tickets are ordered. We have tickets all printed up for the whole year in advance. There are quite a number during the year of these social activities, that I mentioned as being put on by students, for which the Athletic Association furnished certain facilities.

Q. I believe you said a charge is made to students for attending those functions?

A. They probably do themselves. I referred to group dances, inter-fraternity dances, where an organization wishes to put on a social function. They stand all of the expenses of carrying on the function, that is, the music, and any refreshments that may be served. The Athletic Association does not put up any of the money for carrying on activities of that kind. If there is a surplus over and above the amount of the expenses of one of those dances, that belongs to the organization putting on the function. The only contribution made by the Athletic Association to a function of that nature is the use of equipment of building, and janitors. The Faculty Committee that

I have mentioned a number of times in my testimony, connected with the department of Athletics is composed of a group of members of the Faculty appointed by the President every year. They are not the same men, that constitute the Board of Directors of the Athletic Association. Usually nearly all of them are on the Board of Directors of the Athletic Association. There are about seven or eight on the Faculty Committee. Of that number probably one or two are not members of the Board of Directors of the Athletic Association. They are members of the Faculty Committee, and not members of the Board of Directors of the Athletic Association. They are all members of the Faculty. Only the Chairman receives any extra compensation by reason of serving on that Faculty Committee. He is a member of the Board of Directors of the Athletic Association.

I do not have personal charge of any of the records, from which the audit was made for the year ending August 31, 1935.

REDIRECT EXAMINATION, BY MR. KILPATRICK: The Treasurer of the University collected that ten dollars a year athletic fee which I referred to. Then that Treasurer turned it over to the Athletic Department.

RECROSS EXAMINATION, BY MR. EUSTACE:

When I spoke of the Athletic Department I meant the Athletic Association

CHARLES E. MARTIN, a witness called on behalf of complainant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. KILPATRICK: My name is Charles E. Martin. I am employed by the Athletic Department of the University of Georgia at Athens. In 1934 and at the present time, I had charge of the collection of admissions to athletic contests. That card you show me is a football ticket. That is the same notice on the back of it with the exception of the name, that appeared on all tickets, admission tickets, sold by the University of Georgia in Athens in 1934.

This (Pltff's Ex. No.4) is a ticket of the Georgia School of Technology here in Atlanta. Ours was the same except the name, printed the same style except the name of the University of Georgia was used. That notice on the back of it was put on all tickets sold by the University of Georgia for 1934, at the direction of the Chairman of the Board of Regents, Mr. Marion Smith.

These funds from admissions at that time were kept mostly in the Trust Company of Georgia here in Atlanta. We kept part of them in the National Bank of Athens. Those accounts were kept in the name of the Athletic Department, perhaps the Athletic Association, too. There was a small revolving fund at the National Bank of Athens, that was kept in my name as Agent. There was another fund deposited in the Citizens and Southern National Bank at Athens in my name as Trustee.

BY THE COURT: Were all receipts for sale of these tickets you have described made and received by agents of the Athletic Association, agents or officers of the Athletic Association?

A. You mean were the deposits made?

Q. No; the actual sales of tickets. Were they made by people representing the Athletic Association appointed by you or acting for the Association?

A. I would say so. They were acting for the University or Board of Regents.

Q. Mr. Martin, were those accounts, which you have referred to, in the Trust Company of Georgia, and the Citizens and Southern National Bank of Athens, and the National Bank of Athens—were those the accounts, that these levies were served upon you with respect to?

A. One of them was.

Q. Which one?

A. In the Citizens and Southern National Bank.

CROSS EXAMINATION, BY MR. EUSTACE:

I have been connected with the Athletic Department since about 1921 or 1922. I am on the Board of Directors of the University of Georgia Athletic Association. I have been a member of the Board since 1929, I believe. I was a member of the Board in the Fall of 1934. Besides being a member of the

Board of Directors, I was Secretary and Treasurer in 1934. As Secretary and Treasurer, I had custody of all funds which came into the possession of the Athletic Association. Those funds consisted of proceeds of the students' athletic fees and the admissions to athletic activities. We had no income from any other source.

Q. This form of football ticket, which you have identified as being used at the University of Georgia in the Fall of 1934, appears to be one of those used by Georgia Tech. I have none of the tickets used over at the University of Georgia here. I have a ticket, general admission ticket, for one of our games last year. I don't have any for 1934. I probably have in my files, but not with me. I order the tickets printed at the University of Georgia. This notation appearing on the back of the ticket, which has been identified as "Plaintiff's Exhibit 4," was printed on the ticket at the University of Georgia for the year 1934. I don't recall now whether that was the first year that that statement was printed on a University of Georgia ticket. I would have to look it up. The face of the ticket used by the University of Georgia was substantially the same as the printing on the face of that ticket. This seems to be a seal typical of Georgia Tech. Sometimes we have carried a bull dog here. If this had been a Georgia game, it would probably have been University of Georgia game versus University of Alabama.

With respect to the selling price of the ticket, we also printed on the tickets used by the University of Georgia the admission price in one item and tax in

another item and the total, just the same as it is there. When these tickets were sold, these funds passed through the hands of others before they reached me as Secretary and Treasurer of the Association. Of course I cannot sell all the tickets over there. I have to have assistance, and these assistants would necessarily have to handle the tickets and also part of the funds. Those assistants were selected, usually, in conference of myself, Mr. Stegeman, and the Chairman of Athletics, and generally the Senior football Manager, who is a student.

Q. Then the men, who made the selection, did so with the approval of all the Board of Directors?

A. They were Faculty Members. When the game was over, and the proceeds were turned over to me as Secretary and Treasurer, I deposited them in the bank. I did not deposit all of the proceeds in one bank. I deposited most of them in two banks. We carried a checking account in one bank, and we carried another account, that took care of this amount, that was deducted from the total shown on that ticket. In other words, I mean the amount designated on the ticket as tax was kept separate from all the other moneys. That was put in a separate bank account, in the Citizens and Southern National Bank in Athens.

BY THE COURT: How was that account stated? How did it appear?

A. It appears we have two accounts there now.

Q. I am talking about the one with reference to

this tax.

A. That was carried in my name "Charles E. Martin as Trustee." The other account was carried in the name of the Athletic Association.

Q. Then by carrying this amount separate under your name as Trustee you were acting as Trustee for the Athletic Association?

A. Acting as Trustee for the University of Georgia or Board of Regents.

Q. Who designated you as Trustee?

A. I would not say that anyone did. I had authority to deposit the money.

I just voluntarily designated the account as "Charles E. Martin, Trustee." That represents part of the money I collected from the sale of tickets, and represents the amount, which is indicated by the word "Tax" appearing on the ticket. No part of the proceeds, or no part of the money in that bank account, has been used for any of the purposes of the Association. That has been kept intact all the time.

We keep a separate bank account for each year. We opened up one new account I believe. I don't know just what year that was. Those funds were carried as "Charles E. Martin, Trustee" through the 1934 season.

The account was originally opened May 8, 1934, which seems to have been the first deposit. So that

all of the money, that is in that account, is money that arose by reason of the amount designated as tax on the ticket. I had charge of the matter of making up the form of tickets.

Q. When you prepared the form for these tickets, you of course were aware of the provisions of the Federal Taxing Statute, which requires the collection of tax on admissions for certain activities, where admission was charged?

A. I knew a Bill had been passed.

I know the statute required the tickets to show the amount stated separately on the ticket.

Q. And because of your knowledge of the existence of that requirement this form of ticket was used?

A. Well, we felt we had to use that form—it is provided by law—because we didn't want to get into any criminal trouble about it.

I know an audit was made of receipts and disbursements by the State of Georgia of the affairs of the Athletic Association. I have seen a copy of it. I am not acquainted with that item in the audit of "Miscellaneous" expense — "Students' room and board $8,000.00."

Q. Just what are your duties in the Athletic Department of the University of Georgia?

A. I am Business Manager. I handle the details.

Q. Business Manager of the Athletic Association?

A. Yes sir. I am also Business Manager of the Alumni Society of the University. I am not a member of the Faculty of the University.

Under Disbursements the audit shows that Martin received $3,040.00. That represents salary I received. I did not receive any other salary from the Athletic Association. I did not receive any salary from the University of Georgia for 1934, except the salary I received as Business Manager of the Athletic Department. $3,040.00 represents the total compensation I received. That was paid through the medium of the University of Georgia Athletic Association. Out of proceeds of funds in my custody as Secretary and Treasurer of the Athletic Association, I issued the checks for all of the salaries.

DR. A. H. ARMSTRONG, a witness called on behalf of complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. KILPATRICK:

My name is Professor A. H. Armstrong. I am an employee of the Georgia School of Technology. I have been with that School twenty-three years. That is a branch of the University located at Atlanta, Georgia. In 1934, I was associate professor of History and Economics and Chairman of Athletics. The funds with which the Athletic Department of the Georgia School of Technology was run in 1934 came from gate receipts and student fees. The student fee

is one of the regular fees of the institution listed in the tuition bill. At that time the student fee was $7.50 per term. It is now $10.00. That fee was required of all students. It was called the student activity fee. The other proceeds came from athletic admissions. Those admissions covered various intercollegiate athletic fees, in which students representing the Georgia School of Technology participated.

Largely over a period of years we know about what expenses are, and what our reasonable income may be expected to be to meet these expenses. That has been usually the ultimate basis of admissions, that is how we fixed the admissions to those games. When I refer to expenses, I mean the entire expenses of maintaining an athletic department and staging the games. Enumerating some of the things for which those fees, those athletic admissions and student fees were used: They have been used for purchase of land, and for addition of fields, maintenance of various athletic fields, and used for supporting in part the hospital, and in part the doctor's salary. That is the school doctor; the doctor's salary, uniforms, helping the Band; any need that arose for these things.

The funds from which the salaries of instructors, coaches, came was from the general receipts. In 1934 the athletic part of the educational program at Tech consisted of a department, whose members were appointed by the President, and whose actual working staff were hired under the President.

Dr. M. L. Brittain is our President. Coach Alex-

ander of the Department of Physical Education, and the staff under him is in charge of the Athletic Department. Other than intercollegiate athletics we have the intramural program for everyone to take part in the physical education. We have physical classes for men who are not able to make the team or qualify for the military organization.

Q. Do you have any record of the approximate number of students, who engaged in intercollegiate athletics in 1934 at Tech?

A. Well, above 80%.

The receipts at any time from admissions and from this student general fee have never exceeded the expenses of that athletic program I have mentioned if you consider the purchase of additional fields. The University System of the State of Georgia has title to those fields. I think the correct name of that system is the Regents of the University System of Georgia. The athletic program at Tech has to be submitted for the approval of the Faculty. Our Athletic Department or Association was not incorporated at that time. There were rules in effect at that time, regulating the participation in intercollegiate athletics at Tech. All rules were published in the School Book of Regulations. This book (Plaintiff's Exhibit 5) is Book of Regulations for students, and all athletic regulations are in there. The Faculty of the Georgia School of Technology adopted that. This covered 1932. We had a similar booklet for 1934. There was no difference so far as athletics were concerned.

The number of athletic events and teams to which the student belonged, or in which he participated, is limited under these rules. There are rules as to scholarship requirements so far as students participating are concerned. There are requirements for students taking other forms of physical education who cannot compete in intercollegiate athletics. Each man has a corrective class for him. That is not required of students who engage in intercollegiate athletics. They have a certain time for corrective exercises. Coach Alexander appointed me to take care of it. The Georgia School of Technology has a bulletin published each year setting out the various activities at the School. The book which is handed me (Plaintiff's Exhibit 6) is the catalogue of the Georgia School of Technology for the year 1933-34. Page 171 and the following page set out the general athletic program and activities which I have mentioned.

The funds derived from the sources I have mentioned were used to pay salaries, buy equipment fields, pay the Bandmaster, the Doctor, and Hospital. These fees were not used for any other purpose than the ones I have mentioned. This covered the entire athletic program.

This card (Plaintiff's Exhibit 4) is a ticket for admission to the Alabama-Georgia Tech game November 17, 1934. That notice on the back of that ticket was put on all tickets of admission sold during that time at the direction of the Chairman of the Board of Regents of the University of Georgia, Mr. Marion Smith.

CROSS EXAMINATION, BY MR. EUSTACE:

The testimony, which I have just given, applies to the fall of 1934. During the period I have been testifying about we did not have an incorporated Athletic Association, to the best of my knowledge and belief.

After having examined that instrument (Defendant's Exhibit 2) I still want to say that the Georgia Tech Athletic Association was not in existence as a corporation in the fall of 1934. It was not incorporated.

I still want my answer to stand that Georgia Tech Athletic Association was not incorporated during the time I have been testifying about. I think that is correct.

Q. You did prior to the incorporation of this Association maintain at the Georgia Tech an unincorporated Association by the name of Georgia Tech Athletic Association?

A. We had a department called the Georgia Tech Athletic Association.

Q. You carried on business under the name of that unincorporated Association, so that, when you formed the corporation of the Georgia Tech Athletic Association, you merely adopted the name, and took over the equipment and the directors and the committees of the unincorporated Association?

A. Would you mind repeating that question?

Q. That was what was done when you incorporated, was it not? You just took over the unincorporated Association?

A. Yes.

In the Department of Athletics of Georgia Tech I testified that certain activities were carried on in the way of subjects in that department. Football is not a required subject for a degree for a student, who is enrolled in the department of Physical Education, so that a student who makes what I call the Varsity Team of Georgia Tech, and goes out and plays in those intercollegiate activities, is merely doing so voluntarily.

BY THE COURT: Does he get any credit for that on his class record?

A. No sir.

Around 50 students at the Georgia Tech during the fall of 1934 were members of the Varsity Squad. Those were the ones who played at the games for which admissions were charged. I think the total enrollment in the School in the fall of 1934 was about 2,000. Of the 50 students on the Varsity Squad some came from departments other than the Department of Physical Education, from anyone registered at the School eligible to participate.

Q. How many of that 50 on the Varsity Squad

were students enrolled in the department of Physical Education?

A. I think that it ought to be made clear that we do not have a department of Physical Education, in which a degree is granted. If that is the purpose of your questions, we could not say they were in that department. We do not maintain such a department. We are not allowed to do it legally.

The activities, athletic activities, carried on were more for the physical training of students than for developing them into teachers to go out and teach athletics. I do not recall what the total receipts were from athletic admissions during the year 1934 and 1935. I think the total was around $94,000.00. I am not sure about it. There is an audit made for every year. I have that audit with me. I believe it is in my file. I have presented you what purports to be an audit of Georgia Tech Athletic Association for the six months ended December 31, 1934, prepared by Haskins & Sells (Defendant's Exhibit 1) that purports to give a statement of the receipts and disbursements during the period, six months period covered. The accounts of the Georgia Tech Athletic Association are carried on a calendar year basis. The audits were made for six months periods.

BY THE COURT: Is that the whole School of Technology or the Athletic Association?

A. The Athletic Association only.

The audit for the period ending December 31, 1934,

purports to give receipts from the sale of football tickets of $74,168.51. That is the amount as I recall it. And the total receipts for the period of $119,436.75 is for only the six months period ending December 31st. Other athletic activities carried on, to which admissions were charged, during the school year aside from football games were basketball and baseball. No charges were made for track exhibitions that year, so far as I recall. It was football, baseball, and basketball, and during that year there were collected from the students the athletic fees, $7.50 from each student. That was paid by each student who was enrolled in Georgia Tech. The purser of the Georgia School of Technology received the proceeds of those athletic fees. Part of those receipts were turned over to the Athletic Association. All of it for the fall of 1934 that amounted to about $11,000.00, or $12,000.00. In return for payment of that athletic fee, the student received all the privileges and facilities maintained by the Athletic Association, tennis courts, use of gymnasium, use of athletic fields, and so forth. That included the privilege of attending games.

Students were not required to purchase tickets to attend football games or baseball games. The activities during 1934 and 1935, for which an admission price was made, were just football, basketball and baseball. About fifty games altogether were played in all of those three activities. With the $7.50 athletic fee we were allotted as the price of a season ticket for all of those games they got in pretty cheap. Those receipts of $74,168.51 from football shown in

the audit for the fall of 1934 compare favorably with receipts for other years. It was less than 1928 and 1929. I estimate the total income of the Georgia Tech Athletic Association was from athletic activities during the year 1934-35 to be approximately $123,000.00 or $124,000.00. This audit shows that we had an excess in income of $33,521.77 during that six months period. That excess was used to pay outstanding bills and notes due on acquisition of property. When I refer to notes due on acquisition of property I mean notes given for the purchase of a playing field. That is what I designate as the Rose Bowl.

BY THE COURT: In whose name was that taken?

A. Regents of the University of Georgia.

Q. You have a stadium at Georgia Tech?

A. Yes.

Q. What is its seating capacity?

A. 29,000.

The stadium at Georgia Tech was constructed over a period of years, that is, one stand, the west stand, was built in 1914; then another stand, the east stand, was built in 1916; it was constructed over the years as the need arose. The last addition was made in 1925 or 1926. The total cost of the stadium as it now stands is approximately $275,000.00. The stadium is used for all of the functions of the school, football

games. It used to be used for baseball games, track, military reviews, and all student activities, that required an open space. That applies to Rose Bowl field. This stadium is the place where the intercollegiate football games are held. It is used principally for that purpose. The building of the stadium was financed by a gift of $50,000.00 by Mr. John W. Grant, for whom Grant Feld was named, and returns from the funds received from gate receipts, including fees. Rose Bowl Field was financed by $50,000.00 received from the Rose Bowl game in 1929, and is still being paid for out of gate receipts. Any surplus funds received from admissions to athletic activities are applied towards the reduction of the indebtedness against the stadium on the athletic field and maintenance.

Defendant's Exhibit 3 is a Report on Examination of Accounts for six months ending December 31, 1934, of the Georgia Tech Athletic Association. That report was prepared by Haskins & Sells, Certified Public Accountants, of Atlanta and of the United States. A similar examination and report was made for the following current six months' period by Haskins & Sells. I do not have a copy of that report. Directing my attention to page marked "Exhibit A" in that report, and particularly to the items including receipts, I find on that page the amount of receipts from football games for the fall of 1934. The amount shown is a total of $118,966.80. On the same page under the item of "Expenses" there appears "Football $59,648.34." Into that item goes salaries; purchase of equipment; guarantees to other schools.

mean salaries of the entire staff, coaching staff. We have eight on the coaching staff at Georgia Tech. W. A. Alexander is the Head Coach. He receives a salary of $6,000.00 per year. That is his total compensation for his connection with the Athletic Association. He receives no compensation from the School itself.

The salaries of assistant coaches run from $3300.00 for Back Field Coach; Line Coach $1800.00; Basketball Coach $1200.00; Freshman Coach $1500.00; Assistant Freshman Coach $500.00; Track Coach $1,000.00.

We have no trainers. We had one trainer in 1934. His salary was $150.00 per month.

On the following page designated as "Exhibit C," statement cash receipts and disbursements, there appears an item of $2571.70 designated as personnel expenses of a Tech emergency loan fund.

That is a contribution from the Athletic Association to the General Fund of the School. The University System has never provided funds to pay a personnel officer, and the Athletic Association took over the salary of that officer, the Assistant Dean of Men.

That is included in that fund.

That is the main purpose of the use of that fund.

Loans to students are made from the General Scholarship Loan Fund.

Those students, to whom loans were made, may o
may not be members of the Varsity Team.

They are sometimes made to students, who play o
the football team.

BY THE COURT: What is the amount of tha
particular fund you are talking about now, tha
provides for scholarships?

A. $2571.70.

As to whether scholarships are allowed or paid t
students other than football players out of contri
butions to this fund by the Athletic Association,
would like to make clear, sir, that that is not th
entire scholarship fund. That includes the salary o
the Assistant Dean of Men at the Georgia School o
Technology.

Q. Have you a scholarship fund for football play
ers?

A. A general scholarship fund.

As to how that fund is raised, the School has cer
tain scholarship funds, which are available, and th
Athletic Association has contributed to that genera
scholarship fund.

It contributed in 1934 around $7500.00.

I am sure that part of that fund was used fo
scholarships to others than those who played foot
ball. As to any exceptions, individual names, I woul

have to get the Assistant Dean's list to tell you that.

The Assistant Dean of Men would know definitely what amount of that fund went to football players. Mr. George Griffin is Dean of Men. Coach Alexander would know that. A boy might come in, and might need a suit of clothes; any student might need a suit of clothes; or his parents might die, and he might need to go home immediately; and he might need a loan, which will carry him for 30 days. In either case he would apply for this loan, and that loan would be granted. A great deal of that is paid back. It serves any purpose at all that in the opinion of the Assistant Dean of Men was a real need.

As to whether the funds for scholarships to football players were in the nature of gift or loans, in 1934 they were listed in the nature of loans, for which they signed notes.

As to whether those notes were carried as assets of the Association, and listed in the audit, they were carried as assets of the School.

This particular $7,500.00 is in the school. We have nothing to do with that.

No contingencies or conditions are placed upon that contribution from the Athletic Association as to who shall get those scholarships. It is in the jurisdiction of Dr. Brittain and the Assistant Dean of Men, and according to recommendations made to him.

As to what proportion of that $7,500.00 actually went in 1934 to scholarships for football players, I am not in position to answer that except as a matter of belief. I should say possibly around two-thirds or less.

As to what, if anything, is done by either the Athletic Association or the School in finding material for football teams, at Tech we have men who are interested—Coach Alexander and his assistants are interested—in High School players as they come up during the years. Those men, who were old players, are interested. We get our leads on the good men in that direction. One of our old players might see a good boy in Alabama, Arkansas, or North Carolina, or some alumnus might see a good boy among the players, and they are contacted, and, if he is interested, we would be glad to have him.

As to what we do, if anything at all, in the way of sending out scouts for additional materials, I would not state that we send out scouts to find material. As I have said, alumni members and ex-members of the institution will write Coach Alexander, or one of the members of the Coaching staff, and they would say that there is a good man at Americus or Columbus, and usually this alumnus would say to this man "Suppose you write to Coach Alexander." All those letters are turned over to Mr. George Griffin, and he will tell the boys on what conditions they may receive help, or whether they have the required entrance units, and find out whether they are interested in the kind of education we give, which is lim-

ited, and then the boy may come up or he may go somewhere else.

As to whether inducements are held out to these men, who we think would be star football players, to induce them to come to Georgia Tech, and play on the football team;

The General plan of Tech is to find out from whatever sources we can what the condition is. Usually that is covered in a Questionnaire, which is sent to him: "Are you interested? Are conditions such that you need scholarship aid? What does your father do? How much does he earn? What property has he? What is his general financial condition?" Then the blank will indicate if his people are actually in need, or what part, if any, they can contribute towards his expenses. That blank is also filled out by the parents. If the boy says or his parents say that they can supply his tuition, but cannot supply his board, he will be made a loan for his board, or whatever his need is, and that applies to every student. Naturally coaches are interested.

Take for instance a man from Alabama or North Carolina or New Jersey, or some other point, a Georgia boy and a New Jersey boy are exactly on the same basis.

As to what those scholarships consist of; a boy receives no money at all of course. He may receive his board; may receive his room rent; may receive both; may receive his tuition; or all three.

As to the total maximum a player might receive; the total expense of a within-State student at Tech would run between $500.00 and $600.00 for the year.

BY THE COURT: Is any such elaborate and careful effort made to ascertain the availability of students particularly qualified along intellectual lines in history or engineering or surveying or the like? Have you any elaborate system like that in awarding scholarships to worthy men, who have attained some prominence in an intellectual way?

A. The same attention is paid to those men. They all go through a similar course.

Q. I am speaking of the effort to locate them, writing to their parents, where the institution takes the initiative itself.

A. That is done through the Registrar's office and the Principals of High Schools.

Q. You don't make any particular effort to find those?

A. No; I would say not. May I say a word, your Honor? If a Principal is as much interested in his Honor students as a coach is interested in his High School Honor students as a coach is interested in the football squad, he can get the same attention as a boy that is playing football.

Q. As a matter of actual practice and experience that is not done?

A. I am afraid the Principals do not take the same interest, your Honor.

Q. So as far as these scholarships are concerned, the chief activity and interest towards developing the educational qualifications of a boy are those educational qualifications which are strictly physical and which come within your Public Health Department?

A. No sir; that would not be true, your Honor. The Georgia School of Technology will have 18 or 20 applications for getting help from students who might play football, when there would probably be 275 ordinary students that get help.

Q. I am talking about the initiative, going out and trying to find these exceptional students. There are exceptional students with intellectual capacity out of the ordinary as well as students of physical prowess out of the ordinary. As I understand it, all of the effort is made towards those who have physical prowess?

A. That is true of the Physical Educational Department. It would not be true of the Registrar's office.

Q. Doctor, these questions of the Court are directed towards the proposition of whether or not this is a business institution, whereby the College is using it for the purpose of advertising or for commercial gain. That is the distinction that is undertaken to be made by the Government in this case.

With that explanation before you, is there any other department in the College whereby an elaborate separate and distinct business organization or arrangement is made for carrying on that department of the work?

A. Yes. We have at least three other departments, which handled all student activities, both spiritual and social, and I think all of the extra-curricula activities are handled by their own departments.

Q. Take the department of History. Have they a separate business manager, coach, and do they keep a separate set of books, and do they have people who are employed to coach and train up special students, and do they have special ones to go out and find these students?

A. No sir.

Q. Take the Engineering department. Of course every department has its budget under the Regents' System.

Q. I am speaking now about a separate business organization.

A. No sir. There is no other department in the College, that that applies to other than the Social; that is not a strictly educational department.

The total receipts from football appeared to be in excess of $127,000.00 for the fall of 1934. That is comparable to the receipts from year to year from

that source, except boom years, 1928 and 1929, the periods of our highest receipts. Our receipts were increased a great deal by the Rose Bowl game in California in 1929.

In that year the School had an excellent team. The total receipts from football that year to my best recollection were about $200,000.00.

The surplus funds over and above the actual expenses incurred in carrying on the athletic activities are used for any need that the School develops. It has been the practice, if a need develops in any department and it comes to the attention of the President, the President will suggest to the Athletic Association that it can come to their help, and that suggestion is, you might say, practically mandatory.

Particular advances I recall that have been made to the School out of surplus funds of the Athletic Association were, as I testified yesterday, I believe, that we paid the Bandmaster's salary, bought uniforms for the Band, and bought equipment for the Hospital. We have paid the Assistant Dean of Men's salary, half of his salary; we paid the Doctor's, half of the Doctor's salary; and then we contributed from the athletic funds to the completion of the dining hall. Enough funds were not appropriated to complete it, and we contributed $20,000.00 to complete that.

It was stated in the form of a loan for bookkeeping purposes on the Athletic Association's books.

It is carried in the audits as an asset of the Association.

Receipts from these athletic activities come in immediately after the game, and come to my office. Those receipts are checked, receipts of each seller, against his invoices. The money is placed in the safe, recounted, and deposited in designated banks on the following morning.

The funds of the Georgia Tech Athletic Association in 1934 were carried in the First National Bank of Atlanta. Under instructions of the Chairman of the Board of Regents we placed the general operating funds in one account, and placed funds which were under dispute in another savings account. By "funds under dispute," I mean funds that come up as part of the gate receipts, as stated on that ticket, the part for the tax.

My office had charge of the preparation of the tickets for the football games. "Plaintiff's Exhibit 4" is one of the tickets that was used by the Athletic Association in the fall of 1934.

Referring particularly now to the item of the sale price of the ticket, there appears to be a designation of the established price $1.36, and tax 14 cents; total $1.50, that scheme was carried out on all of the tickets that were sold.

This item indicated on the ticket as "tax"—the total of those receipts were kept in a separate account, deposited in a savings account. No other funds

of the Association or the School were placed in that account in bank. The only funds in that bank account were the proceeds from the amounts designated as "tax" on the ticket. There was no commingling with any other funds at all.

I have the form of checks that were used.

MR. SMITH: I am not making objection to that designated as "tax" by the ticket, but I am not foreclosing the argument with regard to the stamp on the ticket. He said "designated as tax," but we make the point that it is not a tax.

Defendant's Exhibit 4 is one of the form of checks used by the Georgia Tech Athletic Association in disbursement of its funds. That is representative of the form of all the checks used in the Fall of 1934 by the Georgia Tech Athletic Association. I have the checks that were used for the payment of the admissions tax for 1932.

Defendant's Exhibits 5-A, 5-B and 5-C were for amounts that were paid to the Collector of Internal Revenue, representing payments of admissions tax on admissions to games in the Fall of 1932.

REDIRECT EXAMINATION, BY MR. KILPATRICK:

As to whether there is any other educational program at Tech besides the physical education program, there is a general religious program.

The Secretary of the Y. M. C. A. and the Dean of

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Men have charge of that.

A student does not get credit for that.

As to other educational activities along similar lines, there is the Glee Club.

The student does not get credit for that.

The Y. M. C. A. had its own Bookkeeping Department.

Other activities were student dramatics, and others of that kind, which were indirectly under the supervision of Dr. Brittain; directly under the Dean of Men.

BY THE COURT: Do any of the funds from any of those agencies go into the funds of the College?

A. No. They are handled as the Athletic funds.

I testified that Grant Field football stadium had been used primarily for athletics. It has been used for public events in the city, such as Oratoriums, or song festivals they have had there. They have had military parades there. The President of the United States spoke there. Lindbergh was received there. It is the only drill ground supplied by the State for the Naval and Military units there.

This physical educational program, which comprises intercollegiate and intramural activities would be absolutely impossible without these admissions

and fees from these students.

Q. Now, Prof. Armstrong, opposing counsel has questioned you with respect to the incorporation of the Athletic Department or Association. Has that charter ever been accepted?

MR. EUSTACE: That is objected to as not the best evidence, and as calling for a conclusion of the witness, who is not shown to be qualified to answer.

THE COURT: The objection is overruled.

MR. EUSTACE: Will your Honor allow us an exception?

THE COURT: Exception noted and allowed.

A. The organization was never consummated.

I was one of the incorporators named in that Petition. The incorporators had a meeting to accept the charter.

There is a head of each department at Tech, Mathematics, Engineering, and Athletics.

Coach Alexander is Physical Director at the head of the Athletic Department.

The Faculty and Dr. Brittain have control of all that entire system of education.

They account to the Board of Regents.

BY THE COURT: Who fixes the salaries of those employed by the Athletic Association? Are they fixed by the Athletic Association or the President?

A. The President. Recommendations are made to him.

The account or accounts, to which I have referred as having been 10% of the money collected from admissions—is the account levied on by Mr. Page.

RECROSS EXAMINATION, BY MR. EUSTACE:

The Y. M. C. A. organization does not engage in any activity from which it derives a substantial income. The Glee Club from its funds has derived some income.

It is not anywhere comparable to the income received from football games. It is a very small amount as compared to receipts from football games.

The Dramatic Association is not engaged in any activity which brings in a substantial income.

Not comparable to the income from football. Those organizations just about break even. They have receipts from entertainments they put on.

Any surplus funds that may be used varies with the years;

But it is nothing comparable to the amount from football.

With respect to the use of the stadium on the athletic field for public occasions, in some cases admissions are charged.

When the President of the United States appeared and made an address, no admissions were charged. They wanted to, but they did not.

There were no admissions charged in cases, when we may have had military parades there.

Public occasions held on the athletic field, that I can recall, for which a charge was made were a series of concerts that were given there by a public city organization, and then there is a charge where the field is loaned to High Schools or any other organizations.

The Athletic Association has never received any part of the receipts.

It is merely a matter of courtesy in extending the use of the stadium to the other organizations.

And the other organizations receive the benefit of any income that might be derived from such admissions except in the case of High School games.

The Athletic Association receives a small share of the proceeds of athletic games put on by High Schools.

That would amount to, I think, somewhere between 8 and 12 per cent; merely the expense of lighting the field and things of that kind.

I don't recall whether there were any charges of that kind made, or any receipts of that kind received, in the Fall of 1934 by the Athletic Association. I would have to look it up.

We had a baseball team in 1934.

We charged admission for those games.

With respect to baseball games being self-supporting in 1934, they might have just broken even.

We did not have a baseball team at Tech School in 1935, we didn't have hard ball, we had plenty of soft ball.

As to the purpose in giving up the baseball activities in 1935, college baseball has fallen out. We substituted soft ball because instead of having two teams playing hard ball we could have 30 to 50 teams playing soft ball.

I think probably there is just as much physical benefit from playing baseball as football.

As to the purpose of abandoning the baseball activities, any sport, that we maintain, where the students lost interest in that sport, we can substitute something for it. We make a change. We did it with LaCrosse at one time, and some others. There is no student interest in college baseball.

There is no public interest whatever in college baseball.

With respect to the matter of incorporation of the Athletic Association, and what I understand that it takes to form a corporation under the laws of Georgia, I was told that we had to make this application. We made the application, and then it just hung fire because the application was made with definite instructions for a particular purpose, and that purpose hung fire for a long time, and we just didn't consummate it. We never held the organization meeting.

My testimony then as to whether or not this organization was incorporated during the period in question is based upon my conception of what it takes to form a corporation under the laws of Georgia.

Q. Now with respect to the individuals, who make up the incorporators of the Athletic Association, are they the same individuals?

MR. SMITH: I know the facts myself. A charter was obtained as of the date, which appears on it. The first meeting of incorporators organized under it occurrred as of a date after 1934. Those are the facts, and what conclusion we draw from that we don't need to ask the witness.

MR. EUSTACE: Just one more question, unless you want to stipulate that the individual incorporators of Georgia Tech Athletic Association were the same people, who immediately prior to the application for charter served in the same capacity in the unincorporated Association bearing the same name.

MR. SMITH: Whatever the facts are we still stipulate.

Q. Is that true, Mr. Witness? Were they the same people?

A. They were.

DR. M. L. BRITTAIN, a witness called on behalf of complainant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. KILPATRICK:

My name is M. L. Brittain. My office at the School of Technology is President. That is in Atlanta, Georgia. I have been President of that School for fourteen years. With respect to the educational program in its entirety that is carried on at the School of Technology and that was carried on in 1934, we are primarily an engineering institution for teaching engineering and architecture, and, of course, we try to carry on a rounded educational system, not only to reach those branches, but also through the Y. M. C. A. we try to reach the boy in what you might term his spiritual nature, and in the Athletic Department his physical education. The Faculty had charge of our entire educational program at Tech. W. A. Alexander was the head of the Physical Athletic Department. The system of athletics, or the program of athletics, that was carried on in 1934 was adopted by the Board called our Athletic Board at the Georgia School of Technology. I am head of that Board. The Board is composed of the President, seven Faculty members, three ex-officio students, and three alumni members. In 1934, I accounted to the Board

of Regents for that program for their approval or disapproval, just as all the other departments. It was approved.

CROSS EXAMINATION, BY MR. EUSTACE:

We do not have separate boards at the head of other departments of the School aside from athletics.

Q. The Athletic Department is the only one, in which a separate Board is maintained?

A. I hesitated to answer that because we have in effect something like Boards. In our Engineering Experiment Station and in diverse other ways besides we have something nearly like that, but not exactly by that term, no sir. Will you let me explain that a little?

We have a Military Department in the School.

We do not have a separate Board at the head of that department.

In our School Engineering, for instance, we do not have a separate Board at the head of the Engineering Department. That composes nine-tenths of the School.

That is really the largest department in the School.

With respect to athletic activities, that are carried on by this Board, that is the Board known as the Georgia Tech Athletic Association.

That Board has been designated by that name since before my day, sir. It was there, when I became connected with the School, and had been for many years. I cannot tell you the number.

Q. The sole function of that Board is to have charge of or direction of athletic activities in the School?

A. That Board knows that it is amenable to the General Faculty always, and we frequently do criticize them, or handle them, you might say, without gloves.

Q. But the function of the Board is to direct the athletic activities?

A. That's right, sir.

Q. Is there any other department in the School aside from the Athletic Department, which makes a charge for exhibitions, that are put on by students in those departments?

A. Yes, sir; our Dramatic Club mainly does, our Dramatic Club for public speaking and dramatics I should say.

We do not have a Board at the head of the Dramatic Club.

That is purely a student activity, with always a Faculty advisory member.

Now with respect to the activities of the Athletic

Board, they keep their own accounts and handle their own funds, and keep them in separate bank accounts in bank, and disburse them with their own checks.

Q. What requirements are made of students in the Georgia School of Technology with respect to athletic activities?

A. Won't you kindly be a little more specific? In what way, sir?

Q. As to their rank in their studies.

A. It is precisely the same for all the students. They must keep up exactly the same as a student in Electrical Engineering or Textile Engineering or anything else.

As to what part in the athletic activities they are given credit towards a degree, we don't have a degree for athletics.

There is no recognition given towards a degree for graduation in engineering for the time put in athletic activities. None whatever.

REDIRECT EXAMINATION, BY MR. KILPATRICK:

No credit is given towards a degree for participation in the religious activities of the Y.M.C.A. nor in the general debating club. There is, however, a Department of Public Speaking in our English

course for which credit is given. No credit is given for a performance of the Glee Club, and no credit is given for participating in putting out a student publication.

DR. S. V. SANFORD, a witness called on behalf of complainant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION, BY MR. SMITH:

My name is Dr. S. V. Sanford. I have been in educational work forty-five years. I have been connected with the University of Georgia since 1903. I went to the University first as an instructor in the English Department; then a Professor; then I organized one of the schools of the University; then made a Director; then Dean of the University; then President; and now Chancellor of the University System of Georgia. Until the reorganization Act of 1931, the Chancellor was an officer only of the University in Athens. Prior to that time there was no such position as President of the University in Athens. That was made an office when the Chancellor was transferred to the whole system. Colonel Snelling was Chancellor of the University for some years before that. I was the first President of the University of Georgia. I was Director of Athletics beginning in 1908 and remained so until I became President of the University.

I want to clear up one thing, that came up yesterday. Mr. Stegeman referred to a committee for passing on scholarships, that committee was created in

1935 to function in the College year 1936.

As to who supervised the grant of scholarships before that time, the method used at the University was that the Registrar of the University sent to an officer known as the Director of Personnel, and, if that record was good, then he sent a Questionnaire to find out whether or not this or that person was financially able to enter the University without help. This list was submitted to me as President, and I okayed it.

The Athletic Association as such has never been permitted to grant scholarships.

It has never done so to my knowledge.

The granting of scholarships has been under my supervision.

The audit shows that a contribution was made to the general scholarship fund in 1934. I would like to make that clear. No student can register in the University without the payment of all fees. We have a number of students, that are appointed to scholarships by outstanding organizations like the Bankers' Association and so forth, and a letter from that organization is authority to register the student. Now we allot funds to athletics and other organizations, and, if the student owes anything to the University, then the collateral is there to take it up.

Before we leave this,—I have made investigation to see how many students are receiving scholarship aid. My last year the number exceeded 900.

I never checked carefully in my last year there to see how many of them were connected with the football team or squad, but I would say between 20 and 30. You were speaking of contribution to other extra-curricular work. These of the University would be divided into three main units—intellectual, moral, and physical development. Allocations have been made to the Demosthenian Literary Society and the Phi Kappa Literary Society. They are the oldest literary societies in the United States.

They meet on Wednesday nights, and engage in debate and public speaking.

It is an educational function, one of the finest we have in the institution.

Credit is not given towards a degree for that work.

I said we allocated funds to it. We allocate funds to maintain, to help maintain, the Glee Club, the Economics Society, the Pioneer Club, which is a club of women, the Band, and a large sum of money to maintain what is known as the Students Voluntary Religious Association.

All of these functions—are under the control and direction of the President and Faculty of the institution.

It is regarded as part of the educational program.

No credit is given for that or for the editing of the various papers. I am not positive about some

edit being given on the degree of Fine Arts for ecomplishment in the Band. They have been dis-ussing that for some time, and I don't know what nclusion was reached.

As to whether they produce revenue of their own, here they charge the public, the Glee Club charges dmission and makes money. The $400.00 or $600.00 lotted to them from time to time, or whatever is eeded for the Glee Club to make its trip, is the only uarantee they have. The other must be made from ie receipts.

BY THE COURT: In these allocations you speak , would any part allocated for the general ex-enses of a society be for the particular purpose of holarship for any person excelling in that particu-r activity?

A. Well, it would be difficult to answer that. We tempt to do everything we can to attract good de-aters to the University because we have so many tercollegiate debates with institutions in the East. 'e have in Georgia what is known as a State High chool Association, and it has contests, consisting of hletics and debates largely, and we ask each Dis-ict to hold a meeting, and stage these contests, and ie winners are sent to the University; that is, the inners are selected; and we keep our eye on the ery best people, who can suggest to the winners iat we would like to have them at the University.

As to what extent I keep in touch with the High chool Superintendents of the State about boys in-

tellectually prominent, who need help to go to the University, I suppose every mail brings a letter from a Principal or Superintendent, stating that "this is an outstanding boy in debate, or in music, or in athletics (As the case may be), whose parents are poor. Is there any possible way to aid him"? If possible, we aid him..

Q. Now I want to ask you about the process—I am asking you this as Chancellor of the System—by which the Board of Regents approves the programs of these institutions, including their athletic programs? To what committee of the Board of Regents is it reported?

A. The Chancellor makes reports to the Finance Committee, and the Finance Committee makes its report in turn on this. On educational matters the Chairman of the Educational Committee. They make their reports.

These Committees don't keep minutes, they only make written reports.

That does not show the detail of what they have approved.

BY THE COURT: Have you a College baseball team?

A. Yes.

Q. Does it pay for itself A. No.

Q. Do you have intercollegiate track? A. Yes.

Q. Does it pay for itself? A. No.

All of these intercollegiate sports that we maintain do not pay for themselves, only ofotball. That s the present public taste.

I can remember the time when football didn't support itself, and baseball paid the best of all sports arried on, all form of athletics. It is only since the Vorld War, when people became interested in bodily ontact sports, that it has been, that is football, on a aying basis.

I regret to say we could not maintain the physical ducation we have in athletics without charging for ootball games.

CROSS EXAMINATION, BY MR. EUSTICE:

With respect to the allocations, that are made to he Dramatic Society, for instance, that money omes from the general fund of the institution.

Q. From appropriations made by the Legislature f Georgia? A Probably I could answer this ques-ion this way. The budget of each institution is made p of three items—the amounts allocated from State ppropriation; the amounts paid by students; and he profits made from the dining hall and dormitory. 'hat constitutes the budget of each unit of the University System. It is an anticipated income of course.

Q. The general fund, from which these funds are llocated, includes money received from the appro-

priations of the Legislature? A. From the combined sources.

Q. So that any allocation, that might be made to any of these independent activities, might have come from the taxpayers of Georgia. A. No sir.

Q. How do you emplain that? A. Originally the Catalogue of the institution stated the fees of $120.00, and then specified that ten dollars was for athletics, five dollars for the library, and five dollars for the hospital, or this or that as the case may be. The actual tuition of the students, if we may call it tuition, was $100.00, and this $20.00 was a student activities' fund, and it came from the students. I wish to amend that by stating that, when the Board of Regents took charge, I recommended that they fix a uniform tuition fee for all the institutions. So they fixed $122.50 for Georgia Tech and the University and $54.00 for this and that, that you are not interested in. That left some discretion for the first time in the hands of the President, who could allocate a certain amount to athletics, a certain amount to the Glee Club, and religious welfare and so forth.

If we needed money to pay the faculty, we made the allocations smaller.

The allocations that I have been testifying about, come from the general funds of the University, and the appropriations from the Legislature go into the general funds.

We have also the student fees, tuition fees, that

I have mentioned, and they also go into the general fund, and they are all mixed up together.

Q. So that it is impossible, when an allocation is made, and paid out of the general fund, to specifically separate the amount, that might have been derived from the appropriation of the Legislature, and the amount, that might have been derived from tuition fees? A. No. We know that we cannot exceed the $20.00.

I presume that it is true that it is more a matter of computation than an adjudication or separation of the funds.

With respect to the literary societies and the Glee Club, as to whether either one of those organizations contributes any of the proceeds of its entertainments to the School, all activities are supervised, and all fees are paid into the treasury of the University.

The Literary Society does not handle its own funds, it has no funds other than those the President allocates.

If they should put on an exhibition, dramatics for instance, and charge admission, the proceeds of those admissions all would be turned in to the treasury of the University.

We would have to take something else than the Literary Society because the Literary Society never

puts on these exhibitions. We would have to take the Glee Club or the Dramatic Club.

Take the Dramatic Cl[illegible]or instance; they put on an exhibition; and charge admission; they would have some expense in putting on an entertainment of that character.

I believe that would be taken out of the proceeds and paid before the accounting was made with the school for the balance, so that, if there is any surplus remaining, it goes into the School fund.

As to the approximate amount of profit, that might be derived from one of those dramatic exhibitions, they maintain themselves, all of these, to the best of their ability. If they were entirely self-supporting, there would be no allocations.

I am President of the Athletic Association of the University of Georgia. President of the Board. As President, I am familiar with and in touch with all of the activities of the Association.

This (Defendant's Exhibit 6-A)was a form of ticket used by the Columbus Group. This is an admission ticket to the game between Georgia and Auburn under the auspices of the Athletic Association of Georgia, Auburn, and Columbus.

I imagine this is substantially the form, that was used for admissions to other football games.

I imagine the other ticket (Defendant's Exhibit

6-B) is also one of the tickets, that was used at a football game held in the fall of 1934. I was not present at either one of the games.

I imagine that is the ticket used at one of those games. I was not present.

Q. You are President of the Athletic Association, and know what they are doing? A. I do not know such details as those.

I would be able to identify that as one of the tickets used by the Athletic Association for a football game in the fall of 1934.

Q. Now with respect to scholarships you mentioned in the early part of your testimony, I will ask you to state, Doctor, what, if any, inducements are held out to men to play football at the University of Georgia. A. Well, no inducements are offered except that some are awarded scholarships, if you wish to call it such, from the loan fund just as other students at the institution.

I know something of the names of the personnel of the Varsity Team in the fall of 1934.

We had a man named Maurice Green.

He was from the West.

From outside of the State of Georgia.

I am not able to state how he happened to become a student at the University of Georgia.

I cannot say what course he was taking at the University. I cannot tell what course this student or that student out of three thousand was taking without the aid of the Catalogue, which would register what course he was taking.

He had a scholarship.

As to the amount of the scholarship, I think that no student received any aid other than Board and lodging. No tuition.

Tuition cannot be waived for any student.

Where a student comes into the University, and does not personally pay his tuition, if I understand that statement, all students pay tuition, and, if a student is granted a length of time, in which to pay that, that permission is granted by a request from him to the Treasurer.

Certain scholarships granted to the students include the tuition.

And if a student should come into the School from outside of the State, and he was granted a scholarship, that scholarship, so far as tuition was concerned, would amount to the regular student's tuition plus the amount chargeable to students from outside of the State.

That would be One Hundred Dollars extra, or $222.50.

Where a scholarship would include board, that

would amount to, we would say $20.00 a month probably.

It is a nine months' school.

And that would average $20.00 a month.

If there was any man on the football squad, who was an outstanding football player, he attracted particular attention of the public.

This man Green, that you were asking me about, was an excellent full-back.

Naturally the members of the Faculty and the public would know something about him, and pay particular attention to his playing by reason of that fact.

As to what this man Green had in the way of a scholarship at the University of Georgia, perhaps he had a scholarship that paid his tuition and board and lodging.

As to whether other inducements outside of those scholarships sometimes given by alumni or business organizations to star football players, I don't know what the outside world does.

I don't know what inducements an alumni organization might offer as an inducement to a star football player.

There are things in the way of jobs or positions, that might be given to these men at the University.

They are not paid for their work at those jobs.

They receive nothing for it.

We had a player there named John Bond in the fall of 1934.

He was from Toccoa, Georgia.

I know at one time he had a partial scholarship.

He was a star half-back; an excellent punter. He was also a son of an alumnus of the University.

I know Charles Turbeyville. He came to us from Milledgeville, Georgia, having graduated from the Georgia Military College, a secondary High School.

He was one of our players on the team in 1934.

I think he played guard or tackle. I cannot remember such technical questions.

I do not know whether he had a scholarship at the University.

I know Alfred W. Minot. He came to us from, I think, Staunton Military Academy in Virginia. I think his home was in New Jersey.

He was also one of the star players, he was a good player, half-back on the team.

I don't know whether he had a scholarship from the University.

o what course he was taking at the University,
l look at the record. I cannot answer that
any particular student in the University, what
he is registered for.

cognize the name of George R. Chapman.

vas one of the players on the team in 1934. He
om Winder, 20 miles from Athens, and Minot
Winder was his roommate.

oman did not have a scholarship, that I know

e had a scholarship, I could look over the rec-
d see.

THE COURT: Is that record here? A. No

cognize the name of Cy Grant. He was a half-
nd an outstanding player. I think he was
from Clarksville or Cornelia, Georgia. He had
larship. His scholarship would amount to the
and board and lodging.

ut $350.00.

member all of the men on that list of names
ndant's Exhibit 7) as being on the Varsity
in 1934, except three. I do not recall at this
t a young man named Earle, and O'Malley,
is other man here on the list. The others I can
ber.

With the exception of those three, I would say that represents the players on the Varsity Squad in 1934.

As to others on that list, who held scholarships in the University that year, as I just stated, we had from between 20 and 30 men on scholarships.

Q. Out of the entire squad—but you are unable to indicate on that list those, who held scholarships? A. I have answered the questions as to the ones, about which you asked me, but I would have to verify that with the list.

I can pick out others.

Others on that list who held scholarships were John McKnight, Henry Wagner, and Causey.

Those are the only ones I can remember without verifying.

As head of the Athletic Board, I am necessarily familiar with the financial transactions carried on by the Board. I examined the reports of the audits that were made and directed that they be made annually. I recognize "Defendant's Exhibit1", as a report of an audit made ot the Athletic Association.

Q. Calling your attention to some figures appearing on Page 2, particularly an item of $140.80 from baseball—does that represent a profit or a loss? A. This is not a detailed statement here. Not being in red, it is a profit there.

Q. And then directing your attention to an item page3 of $8,057.45 designed as "Students' room d board", what does that item represent. A. It presents just exactly what it states. It is room and ard paid.

Q. By the Athletic Association for students at-nding the University? A. Yes.

Q. Some of those students were members of the arsity football team? A. I would like to explain at item on there. I left theUniversity as the Presi-nt on August 31, 1935. I directed that every single em in the University be accounted for, and that ere be no indebtedness whatsoever, that I might rn it over to my successor in black. At that par-cular time that item was due for room and board some athletes, and perhaps by some of those, who ere not athletes. Our Treasurer keeps an itemized atement of each person, and no person can be in-ebted to the University except for board and room nt. This item is shown here as a disbursement. ow I directed therefore that we set up a student tivity sheet, and that that amount should be for is year and that year for the purpose of making holarships legitimate, and that there be no under-and methods used in the conduct of athletics. The outhern Conference, which I founded, was to pro-ct athletes, and make them outstanding for intel-ctual attainment, and the question of scholarships ame up at the last meeting of the Southern Confer-nce, and we stated that athletes should not be dis-riminated against, and all funds in the institution vailable for every student should be available for

athletes. Hence we stated we must specify the exact amount, that is given to every student from the loan fund, and contrast the number with the number of athletes. That action having been passed in the Southern Conference, they award a scholarship based upon a plan similar to the Rhodes scholarship. A certain amount of that money you refer to has been repaid, but at the time I was leaving the institution, and I directed that the allocation made to the Athletic Association, or that much of it, be not given to the Athletic Association but be used to pay the indebtedness of any student on the loan fund or scholarship, and that it be paid, and that accounts for that.

Q. This statement you have just outlined then became effected in the year 1935, and was not effective in prior years?

A. Not so clearly as I said. No one, as you well know, understands what is a scholarship in all institutions. What I might define as a scholarship in one institution, would not be so considered in another. We try to make scholarships on the same basis throughout our organization, and eliminate agreements. Once upon a time we had in the University trust funds such as the Brown trust fund and others. I could award from that fund to any other student than an athlete, but I couldn't award it to an athlete under the technical rulings of the Southern Conference. Now this discrimination we determined should not continue, and so it is now made clear that an athlete has the same opportunity to work in the

gymnasium, or work in the library, or elsewhere, as anybody else.

Q. I am asking you about what this item of $8,057.45, which appears to have been paid out by the Athletic Association for students' room and board, represents. Now you have been talking about board and room to be repaid. This shows it has been paid out by the Athletic Association.

A. No, except in bookkeeping. This is a student activity award, which I intended to allocate to the Athletic Association, but, when there existed an indebtedness on August 31st, I directed that that amount be retained for the payment of those fees.

BY THE COURT: When did you direct that, Doctor?

A. Some time in August, 1935.

Q. When was that audit made?

A. For the year ending August 31, 1935.

Q. So that that represents an expenditure from funds of the Athletic Association, so far as the entry shows?

A. So far as the entry shows, but it is not an expenditure of the Athletic Association, as I have explained.

Q. It is part of the money, that came in from the receipts of the Athletic Association?

A. It did not. It came from the funds, that I have tried to make clear that I have the power as President to allocate.

Q. Doctor, the other witnesses have testified that the University Athletic Association had no income except from receipts from admissions to games and student fees?

A. That is true.

Q. The point I am trying to make is that the student's admission fee is an available amount for this purpose?

A. Well, it can be for the Athletic Association whatever I allocate.

Q. And for the athletic fee you made a charge of ten dollars, didn't you, to each student?

A. Once upon a time the Catalogue carried the statement—prior to the reorganization the Catalogue carried the statement—that the amount required of each student was $120.00, specifying that of that $10.00 was for athletics, $5.00 for the library, $5.00 for the hospital, and so forth, but, when the Regents came in, the whole amount of money paid was named as one lump sum of $122.50, divided into quarterly payments. That left therefore the right in the President to allocate funds according to his wishes and the needs of the various extra-curricula activities. It happened at the end of a certain year we didn't have sufficient funds to pay the Faculty

of the University. We only could pay half for the closing month of the year. I then put $14,000.00 or whatever the amount was over on that side of it, in order that the Faculty might be paid.

Now we are talking specifically about what happened in the fall of 1934, and that audit shows receipts by the Athletic Association of students' fees to the amount of $23,214.29. Now that represents the amount of the tuition paid for an athletic fee. That represents the amount that was allocated.

Complainant next introduced in evidence Title Page, Paragraph 1, Page 1, and pages 9 through 14 of "Plaintiff's Exhibit 1," being Regulations for Guidance of Undergraduate Students of the University System at Athens for year 1935-1936, as follows:

PLAINTIFF'S EXHIBIT 1

"Regulations for Guidance of Undergraduate Students

The University of Georgia
1935-1936

Regulations for Guidance of
Undergraduate Students

Discipline and General Regulations

By action of the Regents, the legislative authority to establish rules and regulations for the immediate government of the University in all that relates to the order and discipline of the Institution is dele-

gated to the President and Faculty.

* * * * *

Eligibiilty for Student Activities

Two full courses per quarter is the minimum normal load for any student for participating in student activities. However, a student while engaging in an authorized activity may be registered for more than the normal load required.

A student who is on scholarship probation is not eligible for participation in any student activity or to represent the University or student body in any official capacity. This includes athletic teams, debating teams, glee clubs, dramatic clubs, student publications, campus leaders, Pan-Hellenic Council presidents, president of the Women's Student Council, or other activity which, in the judgment of the Administrative Dean and the Dean of Men and the Dean of Women, should be included.

Students on conduct or absence probation are in general ruled ineligible if, in the judgment of the Administrative Dean, the Dean of Men, and the Dean of Women, this action is advisable.

A student who is ineligible because of a conditional grade which placed him on probation may become eligible by removing this conditional grade.

Requirements for Graduation

Thirty-six courses plus Military Science (men) or Physical Education (women) are required for grad-

uation. A total of 72 quality points, 36 of which must be obtained in the Senior Division, must be obtained to qualify the student for graduation. No quality points may be obtained in the reqiured courses in Military Science or Physical Education. The grade of D (60-69) is not counted towards a major and in at least three-fourths of the total number of courses the grades must be C (70-79) or higher.

Athletic Ticket

Students will be admitted to all intercollegiate athletic contests upon presentation at Student Gate of Athletic Ticket issued from the office of the Business Manager of the Athletic Association. This ticket will be taken up and its right forfeited if presented by a person other than to whom issued. A duplicate ticket will be issued only upon presentation of proof of satisfactory evidence of loss or destruction of original and upon the payment of a fee of $2.00.

Conference Rules

The University of Georgia is a member of the Southeastern Conference and all students participating in intercollegiate athletics must comply with the regulations of that body. A copy of the Rules and Regulations of the Southeastern Conference can be had by applying to the Faculty Chairman of the Committee on Athletics or to the Director of Athletics. A condensed statement of the rules is given below. These rules apply to all sports.

In order to be eligible to represent the University in any intercollegiate athletic contest, a student:

1. Must be a bona fide matriculated student and present upon first entrance at least fifteen standard high school units and be regularly enrolled and be doing full work as defined by the regulations of the institution in which he is enrolled.

2. Must have been in residence for an entire scholastic year from date of first matriculation, and must have completed the scholastic requirements.

3. Must have been in the institution not less than one-half of the college year in which he participated in intercollegiate athletics.

4. Must not have participated in intercollegiate athletics at any other college or university.

5. Must not have participated in intercollegiate athletics more than one freshman and three varsity years over a period of five consecutive college years counting from date of first matriculation.

6. Must not have received any gift, remuneration, or pay for his services on a college team; must not hold any scholarship or loan except through the University officer or committee that usually administers such funds.

7. Must not sign a contract or enter into any agreement, explicit or implicit, with a professional team or compete with a professional for compensation.

8. Must meet the scholastic and attendance requirements of his institution and of the Conference.

9. Must not play on an athletic team other than his own during the college year.

Faculty Committee on Athletics

It is the duty of the Faculty Committee on Athletics to require a pledge in writing of the candidate, certifying on his honor that he is in the strict sense of the word an amateur and that he is eligible under the rules of the Conference and of the Institution to participate in intercollegiate athletics and to represent the Institution. Any student who wilfully makes any false or misleading statement or submits or causes to be submitted any false, spurious or misleading document, or fails or refuses to give full and complete information upon any matter relating to his eligibility shall thereby forfeit the privilege of competing thereafter in any intercollegiate sport. The eligibility of the candidate is determined by the Faculty Committee on Athletics.

Complainant next offered in evidence the following portions of "Plaintiff's Exhibit 2," being the General Catalogue of the University of Georgia for 1933-34: Pages 23 and 24; pages 218 through 223; pages 324, 327, 328, as follows:

PLAINTIFF'S EXHIBIT 2

Department of Athletics and Physical Education for Men

Herman Jerome Stegeman, Ph.B. (Chicago), M.A. (Beloit)

Associate Professor in charge of the Department

of Physical Education for Men; Director of Athletics.

Weems Oliver Baskin, B.S. (A.P.I.)
Assistant Professor of Physical Education for Men; Track Coach.

John Ellis Broadnax, B.S.C. (Georgia)
Freshman Athletics.

Rex Edward Enright, LL.B. (Notre Dame)
Assistant Professor of Physical Education for Men; Basketball Coach

Edwin Wilds Godbold, A.B. (S.C.), Captain, Cavalry, U.S.A.
Assistant Professor of Military Science; Lacrosse Coach.

Clarence Wilford Jones
Instructor in Physical Education for Men; Boxing and Swimming Coach.

Harold G. Holt, Captain, Cavalry, U.S.A.
Assistant Professor of Military Science; Polo Coach.

Harry James Mehre, Ph.B. (Notre Dame)
Associate Professor of Physical Education for Men; Football Coach.

Ivey Merwin Shiver, B.S.C. (Georgia)
Assistant Football and Baseball Coach.

Timothy Aloysius Twomey, Ph.B. (Notre Dame)
Assistant Football Coach.

William Pierce White
Baseball Coach.

Charles Edward Martin, A.B. (Georgia)
Manager of Ticket Sale and Business Manager.

William Oscar Payne, A.B., M.A. (Georgia)
Professor of History and Faculty Chairman of Athletics.

Physical Education — Men

Junior Division Courses

40. Physical Education. Hours to correspond with Military Schedule. One course. Fall, Winter, and Spring quarters.

Required of all Freshmen exempted from Military Science.

41. Physical Education. Hours to correspond with Military Schedule. One course. Fall, Winter, and Spring quarters.

Required of all Sophomores exempted from Military Science.

42. Physical Education. (Zoology 9 — Human Physiology). Five or six lectures per week. One course. Spring quarter. Mr. Boyd.

43. Individual Hygiene. Five or six lectures per week. One course. Winter quarter. Mr. Jones.

44. Introduction to Physical Education. Five or six lectures per week. One course. Fall quarter.

45. Methods of teaching physical education in High School. Five or six lectures per week. One course. Spring quarter.

Senior Division Courses

80. Theory and Practice of Physical Education. Football. Five lectures per week, with daily labora-

tory. One course if taken with laboratory; half course if taken without laboratory. Fall quarter. Mr. Mehre.

81. Theory and Practice of Physical Education. Basketball. Five lectures per week with daily laboratory. One course if taken with laboratory; half course if taken without laboratory. Winter quarter. Mr. Enright.

82. Theory and Practice of Physical Education. Track and Field. Five lectures per week, with daily laboratory. Single course if taken with laboratory; half course if taken without laboratory. Spring quarter. Mr. Baskin.

(Physical Education 80-81-82 form a triple half course for students taking these courses without laboratory work.)

83. Advanced Hygiene and Sanitation. Five lectures per week. Prerequisite: Physical Education 42. One course. Spring quarter. Dr. Reynolds.

84. Playground Management and Community Recreation. Five lectures per week. One course. Winter quarter.

85. Safety and Health Methods. Five lectures per week. One course. Spring quarter. Mr. Jones.

Red Cross Certification; rescue and resuscitation; safety methods in school and industry.

86. History and Theory of Physical Education. Five lectures per week. One course. Winter quarter.

Senior Division or Graduate Courses

87. Organization and Administration of Physical Education. Five lectures per week. One course. Winter quarter. Mr. Stegeman.

88. Physical Education Methods (Advanced course). Five lectures per week. One course. Prerequisite: Physical Education 45. Fall quarter.

89. Theory and Teaching of Corrective Gymnastics. Five periods per week. One course. Spring quarter.

Lecture and laboratory course.

Physical Education—Women

Junior Division Courses

1. Physical Education. Three periods, special lectures. One course. Fall, Winter and Spring quarters. Campus II and Campus III. Staff.

Athletics, dancing, swimming, natural and individual gymnastics scheduled to meet individual needs indicated by medical and physical examinations and previous physical education. Follow-up physical examinations, conferences, and health lectures.

2. Physical Education. Three periods, special lectures. One course. Fall, Winter and Spring quarters. Campus II and Campus III. Staff.

Continuation of Physical Education 1. Wider choice of activities permitted.

*4. Horsemanship. Two periods. Winter quarter. Campus II. Capt. Godbold.

Includes saddling, the aides, gaits, change of direction, suppling exercises, riding without stirrups, jumping and cross country riding. Written permission from parents or guardian. Physicians certificate required.

5. Introduction to Physical Education. Five recitations. One course. Winter quarter. Campus III. Mrs. Soule.

Brief historical survey of the field of health and physical education. Interpretations and objectives of physical education. Discussion of current literature.

7. Nature and Function of Play. Five recitations. One course. Prerequisite: Sophomore standing. Fall quarter. Campus III. Miss MacNaught.

(1) Study of the physical, psychological and social characteristics of children of various age levels, and games suitable to these ages;

(2) Technique of games of low organization and lead up games suitable for junior and senior high school girls. Achievement tests.

8. Leadership. Five recitations. One course. Prerequisite: Sophomore standing. Spring quarter. Campus III. Miss MacNaught.

(1) Community recreation; (2) study of girls' or-

ganizations, including Camp Fire, Girl Scout; (3) instruction and tests for Red Cross First Aid Certificate.

*10. The Dance. Three periods. One course. No credit. Fall, Winter, and Spring quarters. Campus III. Miss Morse

Representative folk and national forms of the dance including modern tap.

*15a. Swimming. Two periods. Half course. Two quarters. Campus II. Miss MacNaught.

Elementary swimming.

*15b. Swimming. Two periods. Half course. Two quarters. Campus II. Miss MacNaught.

Advanced swimming. Instruction and tests for Red Cross Life Saving Certificate.

Senior Division Courses

50. Sports. Four recitations, two laboratories. One course. Prerequisite: Section 1, Physical Education 1 and 2. Section 2, Physical Education 7 and 8. Section 1, elective. Section 2, required of all women students majoring in Physical Education. Section 1, Winter quarter. Section 2, Fall Quarter. Campus II. Miss MacNaught.

(1) Principles of coaching and officiating in field hocky, basketball, soccer, baseball, field, track, and archery. Instruction and tests toward Official Basketball Rating Certificate.

*55a. The Dance. Two periods. Half course. No credit. Fall, Winter, and Spring quarters. Campus II. Miss Morse.

Fundamental dance technique, rhythm training and elementary dance composition.

*55b. The Dance. Two periods. Half course. No credit. Prerequisite: Physical Education 55a. Fall Winter, and Spring quarters. Campus II. Miss Morse.

Continuation of 55a, advanced technique and dance composition, correlation of the dance with the other arts. Notebook required.

56. Theory of the Dance. Five recitations. One course Prerequisite: Physical Education 10-55. Fall quarter. Campus II. Miss Morse.

(1) The place of the dance art in modern education; (2) history and philosophy of the dance; (3) contemporary dance personalities.

60. Kinesiology. Five lectures. One course. Prerequisite: Anatomy and Physiology. Fall quarter. Campus II. Miss MacNaught.

A study of the mechanics of bodily movements.

61. Therapeutic Gymnastics. Five recitations. One course. Prerequisite: Physical Education 60. Winter quarter.

*Courses may be used by Senior Division students to meet requirements of Physical Education 1 or 2. Campus II. Miss MacNaught.

Study of common postural defects, and measures for their correction. Methods of examination, diagnoses and treatment. Adaptation of activities in corrective procedures.

62. Advanced Theraputic Gymnastics. Five recitations. One course. Prerequisite: Physical Education 61. Campus II. Miss MacNaught.

65. Personal and Community Hygiene. Five recitations. One course. Winter quarter. Campus II. Mrs. Soule.

(1) Personal hygiene, health values and current problems will be considered; (2) group and community hygiene.

69. Technique of Teaching Physical Education. Five recitations. One course. Prerequisite: Skill and knowledge tests in various activities. Campus II. Miss Morse.

Methods and practice in teaching all forms of dancing, swimming, gymnastics and other physical education activities.

70. Directed Teaching. Four laboratory periods. Individual and group conferences. One course. Prerequisite: Senior rating in Physical Education. Fall Winter, and Spring quarters. Campus II and Campus III. Mrs. Soule.

Assisting in undergraduate activity courses. Teaching in the practice school.

75. Principles, Philosophy, and History of Physical Education. Five recitations. One course. Prerequisite: Senior rating in Physical Education. Fall quarter. Campus II.

(1) General principles underlying science of Physical Education; study of aims and objectives. (2) History and modern trends in Physical Education.

76. Organization and Administration of Health and Physical Education. Five recitations. One course. Prerequisite: Physical Education 75. Winter quarter. Campus II. Mrs. Soule.

This course will consider the health and physical education program in the elementary school, high school, and college. Problems of procedure and methods of administration both of plant and program will be included.

University Eligibility Rule

Two full courses a quarter are the recognized normal load for any student for participating in student activities. However, a student while engaging in an authorized activity may be registered for more than the normal load required.

No student with any condition or failure standing against him shall be eligible to participate in student activities. This rule applies to all students engaged in authorized student activities.

A student having any condition or failure standing against him in his required normal load, or who

is on probation for any reason, is ineligible and his name cannot remain on the eligible list.

Eligibility may be restored by: (a) repeating the course and receiving a passing grade; (b) earning an average of one quality point on a program of at least three courses during the quarter immediately preceding restoration of eligibility; or (c) completing one full year of work. If restored to eligibility, the student shall be on warning until he has made a grade of 70 or better in all of the courses for which he is registered.

Eligibility Lists

After consulation with officials charged with the supervision of authorized student activities, the Administrative Dean shall prepare a list of all students engaged in major forms of extra-curricular activities. This list shall be known as the Eligibility List. The authorized activities are intercollegiate athletics, dramatic or music clubs, public debating, oratorical contests, and student publications.

Athletics

The University of Georgia is a member of the Southeastern Conference and all students participating in intercollegiate athletics must comply with the regulations of that body. A copy of the Rules and Regulations of the Southeastern Conference can be had by applying to the Faculty Chairman of the Committee on Athletics or to the Director of Athletics. A condensed statement of the rules is given below. These rules apply to all sports.

In order to be eligible to represent the University in any intercollegiate athletic contest, a student:

1. Must be a bona fide matriculated student and present upon first entrance at least fifteen standard high school units and be regularly enrolled and be doing full work as defined by the regulations of the institution in which he is enrolled.

2. Must have been in residence for an entire scholastic year from date of first matriculation, and must have completed the scholastic requirements.

3. Must have been in the institution not less than one-half of the college year in which he participated in intercollegiate athletics.

4. Must not have participated in intercollegiate athletics at any other college or university, that is, he must not be a migrant student.

5. Must not have participated in intercollegiate athletics more than one freshman and three varsity years over a period of five consecutive college years counting from date of first matriculation.

6. Must not have received any gift, remuneration, or pay for his services on a college team; must not hold any scholarship or loan except through the University officer or committee that usually administers such funds.

7. Must not sign a contract or enter into any agreement, explicit or implicit, with a professional

team or compete with a professional for compensation.

8. Must meet the scholastic and attendance requirements of his institution and of the Conference.

9. Must not play on an athletic team other than his own during the college year.

Faculty Committee On Athletics

It is the duty of the Faculty Committee on Athletics to require a pledge in writing of the candidate, certifying on his honor that he is in the strict sense of the word an amateur and that he is eligible under the rules of the Conference and of the Institution to participate in intercollegiate athletics and to represent the Institution. Any student who wilfully makes any false or misleading statement or submits or causes to be submitted any false, spurious or misleading document, or fails or refuses to give full and complete information upon any matter relating to his eligibility shall thereby forfeit the privilege of competing thereafter in any intercollegiate sport. The eligibility of the candidate is determined by the Faculty Committee on Athletics.

Complainant next offered in evidence "Defendant's Exhibit 1," being a report of Examination by the State Auditor of the accounts of the University of Georgia Athletic Association for the year ended August 31, 1935, as follows:

Copy page 186—Defendant's Exhibit 1

No. 35 A 25

EXAMINATION OF ACCOUNTS

UNIVERSITY OF GEORGIA

ATHLETIC ASSOCIATION

YEAR ENDING AUGUST 31, 1935

Tom Wisdom
State Auditor.

Honorable Eugene Talmadge,
Governor of Georgia,
Atlanta, Georgia.

Dear Sir:

I hand you herein my report of an examination of the books and records of the

UNIVERSITY OF GEORGIA
ATHLETIC ASSOCIATION,

for the period

YEAR ENDING AUGUST 31, 1935

as follows:

	Page
COMMENTS	1
CURRENT FUND BALANCE SHEET	1
STATEMENT OF RECEIPTS AND PAYMENTS	2-3
DETAIL OF PERSONAL SERVICES	4-6
DETAIL OF TRAVEL EXPENSE	4-6
DETAIL OF BALANCES	7
DETAIL OF ACCOUNTS PAYABLE	8
DETAIL OF LOANS PAYABLE	9
DETAIL OF INSURANCE & SURETY BONDS	11

Respectfully submitted,

(Signed) Tom Wisdom,
State Auditor.

Atlanta, Georgia,
December 6, 1935.

— C O M M E N T S —

SCOPE OF EXAMINATION

This examination of the books of record of the University of Georgia Athletic Association for the period of year ended August 31, 1935, including funds received and disbursed directly by the Treasurer of the Athletic Association and as agent by the Treasurer of the University of Georgia.

All recorded receipts were traced to the bank accounts as deposits and verified with the daily sale records wherever such records were located. All checks were compared to the book of original entry and these books reconciled with the bank accounts. Payments were verified with requisitions from the Director of Athletics.

This report is made on a Cash Receipt and Disbursement basis.

CURRENT FUND BALANCE SHEET

This statement presented on page 1 gives the financial condition of the Association at August 31, 1935.

STATEMENT OF RECEIPTS AND PAYMENTS

This statement presented on pages 2 and 3 shows receipts and payments for the year ended August 31, 1935.

Under receipts from sports, guarantees have been deducted from receipts rather than shown as a payment.

GENERAL

Detail of personal services and travel are shown on pages 4-6.

Detail of Accounts Payable are shown on page 8 and Loans Payable on page 9.

Detail of Surety Bond and Insurance in force are shown on page 11.

UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION

CURRENT CASH BALANCE SHEET AUGUST 31, 1935

ASSETS

Cash - Anal p 7		$ 8 857 13

LIABILITIES

Accounts Payable - Anal p 8	$19 373 47	
Loans Payable - Anal p 9	53 400 00	$72 773 47
RESERVE FOR PRIVATE TRUST FUNDS		
Tax funds awaiting court decision		10 596 83
TOTAL Liabilities		$83 370 30
DEFICIT		
Liabilities and Reserve in excess of assets		74 513 17
TOTAL		$ 8 857 13.

UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION

STATEMENT OF RECEIPTS AND PAYMENTS
YEAR ENDED AUGUST 31, 1935

RECEIPTS

INCOME

Student Fees			$ 23 214 29
Duplicate Athletic Tickets			18 00
Radio			2 000 00
Sport Receipts:*			
Football	$ 71 323 27		
Tax	5 264 33	$ 66 058 94	
Baseball		140 80	
Basketball	200 18		
Tax	40 48	159 70	

Boxing	63 35		
Tax	5 45	57 90	
Track		17 20	
Golf		70 00	
Tennis		45 00	
Swimming		25 00	66 260 14
Donations			15 00
Miscellaneous			112 80
TOTAL Income Receipts			$ 91 620 23

NON-INCOME

Loans Payable		31 900 00	
Tax - awaiting court decision	5 310 26		
Interest on money the in savings account	70 05	5 380 31	
TOTAL Non-Income Receipts			37 280 31

TOTAL Receipts			$128 900 54
BALANCES - September 1, 1934			
For Operations:			
In Banks	232 90		
Due from University of Georgia	18 28	251 18	
For Private Trust Funds			
Tax Account		5 216 52	5 467 70
TOTALS			$134 368 24

* NOTE - Guarantees deducted from receipts.

UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION
STATEMENT OF RECEIPTS AND PAYMENTS
YEAR ENDED AUGUST 31, 1935

PAYMENTS

EXPENSE

Personal Services - Anal p 6		$ 45 658 34
Travel Expense - Anal p 6		14 466 00
Supplies		3 931 39
Communication		728 70
Heat, Light, Water service		756 65
Stamping - Printing		
Red and Black	$ 1 650 00	
Other	777 59	2 427 59
Repairs and Alterations		1 257 30
Rents		401 00
Insurance and Bonding		2 430 99
Interest		2 697 96

271

Equipment			10 600 62
Miscellaneous			
Students Room and Board		8 057 45	
Other		1 097 12	9 154 57
TOTAL Expense Payments			$ 94 511 11
NON-EXPENSE			
Loans Payable			31 000 00
TOTAL Payments			$125 511 11
BALANCES - August 31, 1935, Anal p 7			
For Operations:			
In banks (net overdraft)	$ 2 005 06		
Due from University of Georgia	265 36	1 739 70	
For Private Trust Funds:			
Tax Account		10 596 83	8 857 13
TOTALS			$134 368 24

UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION

DETAIL OF PERSONAL SERVICES AND TRAVEL, YEAR ENDED AUGUST 31, 1935

	PERSONAL SERVICES	TRAVEL EXPENSE
Aiken T	$ 780 00	$
Athens Country Club	288 85	
Bachelor G	327 50	
Band Members		328 75
Bael G T	4 50	
Baseball Team		298 83
Basketball Team		183 32
Baskin W O - Asst Coach	2 471 86	62 50
Black Charlie - Referee	7 50	
Black Jack - Official	135 00	
Bennett J C Asst Coach	1 490 00	
Bennett Tiger	10 00	8 75
Bolton J D		6 00
Boxing Team		577 21
Brice M - Official	70 50	
Broadnax J E - Freshman Coach	2 699 70	451 50
Brown Bertie Sue	5 00	
Burch J M - Carpenter	1 036 62	
Camp E		70 00
Cabaniss Dr W H	40 00	
Christopher A	572 00	
Cole L	3 00	

Cortin A L	4 50	
Danforth E		70 00
Dodd Oakey F - Clerk	71 87	
Dozier Tom		4 00
Ducote J R	184 20	
Ennis J		12 00
Enright Rex - Asst Coach	4 950 00	77 50
Football Team & Attachees		7 524 68
Frost F H - Physical Education	1 710 00	
Gardner M O - Official	61 25	
Golf Team		38 68
Goss Dr Ralph	170 00	
Grummond E - Custodian of Equipment	810 00	3 72
	30 00	
Hayes J	492 00	
Hayes Manuel	22 00	
Epps Lucile	45 00	
Halligan Jas - Official	102 20	
Heach F S - Official	80 55	
Heckman H M - C P A	300 00	
Hirsch and Smith	25 58	
Horn Wendall	51 00	
Howell Hollis - Referee	87 50	
Hutchins A R - Official	107 10	

Jones C W - Trainer	$ 2 962 70	$ 28 75
Kalkmann G W	79 60	
Kalkman Fred - Official	79 60	
Kingery		30 30

Kilpatrick M E		91 41
Lipscomb J	572 00	
Linsey Paul	163 00	
Maddox W M	42 50	
Maddox W T	120 50	
Martin C E - Treasurer	3 240 00	879 95
Martin John	67 50	
Mayes W A	1 50	
McGill R		70 00
McMasters O M - Official	101 80	
Mehre H J - Head Coach	7 632 50	75 20
Michael Max		5 50
Miday E F	15 00	
Miller C	11 40	
Monat John - Official	76 60	
Mumma Major - Official	60 50	
Murray Mrs	5 00	
O'Sullivan M M - Official	58 25	
Payne W O	500 00	20 00
Philpot T M - Referee	50 00	
Piedmont Hospital	572 82	
Raisty L		7 00
Salt E Ben		68 50
Sanford J V		159 16
Scott Alfred - Chance Chunk		38 74
Short A B	20 50	
Short J D	19 00	
Short Rex	5 00	
Short Serg	1 75	
Shiver I M - Asst Coach	1 714 40	152 90
Slate Tom - Referee	73 25	
Smith V - Asst Coach	2 541 63	99 70
Spann Helen - Nurse	18 00	
Stark P	469 00	

2755

Stegeman H J - Director of Athletics	3 150 00	993 95
Sutherland Ed	45 00	
Sutherlin Dr M T	148 00	
Swimming Team		30 80
Tennis Team		59 00
Tarpley W R	5 00	
Thomas Charles	267 50	
Thornton Dr Lawton	270 00	

Page 6.

Tichenor W R - Official	$ 122 50	$
Timm Albert H	15 00	
Towns Forrest		14 71
Track Team		466 83
Tucker G	5 00	
University Infirmary	35 25	
Undistributed	670 55	1 456 16
Ware Dr S J	37 00	
Weismuller O M	72 02	
Weaver John	6 72	
Wilson Troutman	280 00	
Willis John	6 72	
TOTAL	$45 658 34	$14 466 00

DETAIL OF BALANCES
AUGUST 31, 1935

FOR OPERATIONS

Trust Company of Georgia - Atlanta		
Balance per bank	$ 2 818 64	
Deduct outstanding check (detail on file)	4 904 09	
Balance per books		$ 2 085 45
Citizens and Southern National Bank		
Balance per bank - per book		1 20
National Bank of Athens		
Balance per bank - per books		79 19
TOTAL of banks for operations		$ 2 005 06
Due from Treasurer of the University of Georgia		265 36
TOTAL for operations		$ 1 739 70

277

FOR PRIVATE TRUST FUNDS

Citizens and Southern National Bank, Athens	
Savings Account	10 596 83
TOTAL all Balances	$ 8 857 13

DETAIL OF ACCOUNTS PAYABLE
AUGUST 31, 1935

Athens Hardware Co	$	10 51
Arnett's Studio		1 50
Atlanta Athletic Club		35 50
Allen Hardware Co		6 80
Athens Water Works		7 60
Bernstein Furniture Co		15 00
Capps W A		1 50
Champion Knitwear		1 692 87
Dixie Hotel		8 00
Dozier Co		6 00
John K Davis & Sons		3 10
Epps Electric Co		6 90
Georgia Public Utilities		9 11
Georgia Wholesale Co		9 38
Goodwyn Dr		50 00
Georgia Coop		150 00
Hodgson Oil Refining Co		5 33
Journal Engraving Co		191 88
Crawford W Long Hospital		121 15
Lake & Ayers Drs		25 00
Laurence Dr Chas E		10 00
McGregor Co		720 25
Michael Bros		314 00
Moss R L Mfg Co		1 50
Norris Hardware Co		4 65
Osbrink R H Mfg Co		15 00
O'Shea Knitting Mills		3 888 10
Page Steel & Wire Fence Co		6 52
Penny J C Co		579 92

Parks Chambers Co		3 449 45
Phoenix Supply Co		15 08
Piedmont Hospital		184 48
Riddell John T		920 40
Selig The Co		172 00
Spalding A G Co - Open Account	$ 1 301 40	
Note	4 848 75	
		6 150 15
Stanley Studios		132 00
Standard College		11 55
Thronton Dr Lawton		355 00
Talmadge Bros		2 30
Webb-Crawford Co		3 35
Western Union		14 04
West Disinfectant Co		29 09
Woodruff Ins Co		37 50
TOTAL		$19 373 47

DETAIL OF LOANS PAYABLE
AUGUST 31, 1935

DATE	PAYEE	MATURITY	AMOUNT
6- 1-35	Trust Company of Georgia	8-30-35	$ 4 700 00
7- 1-35	" " "	9-30-35	4 300 00
7-23-35	" " "	10- 2-35	9 000 00
7-26-35	" " "	10-24-35	25 000 00
8- 1-35	" " "	8-30-35	5 400 00
8- 1-35	" " "	8-31-35	5 000 00
	TOTAL		$53 400 00

UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION

DETAIL OF INSURANCE AND BONDS
AUGUST 31, 1935

NUMBER	COMPANY	COVERAGE	AMOUNT	PREMIUM	DATE	EXPIRATION		AGENT
3276	American Eagle - G. S.	Schedule (*)	$ 1 000 00	$ 101 20	5-8-31	5-8-36		Lipscomb Dearing Hutchins Co
6575	Aetna Ins Co - G. S.	" (*)	4 600 00	296 70	2-16-35	2-16-36		" " "
101814	Commerical Union	Toilets	3 000 00	118 50	9-11-32	9-11-35	R	" " "
		Office Building	2 500 00					
		Club House	1 000 00					
		Press Box	500 00					
		Concession Building	500 00					
102011	" "	Athletic Equipment	7 500 00	23 06	9-3-34	9-3-35	R	" " "
5397	Continental Ins Co	Schedule (*)-G. S.	2 500 00	64 50	9-14-34	9-14-35	R	" " "
2675	Fidelity Phoenix Ins Co	" (*)-G. S.	1 000 00	25 80	2-6-35	2-6-35		" " "
D715989	Firemans Fund	" (*)-G. S.	1 000 00	25 80	2-6-35	2-6-36		Thos M Tillman
4814	Hartford Fire Ins Co	Woodruff Hall	5 000 00	34 00	3-6-35	3-6-36		Lipscomb Dearing Hutchins Co
3320	National Liberty	" "	5 000 00	34 00	11-3-34	11-3-35	R	Dubose and Dubose
184000	North British & Mercantile	" "	5 000 00	34 00	3-6-35	3-6-36		Lipscomb Dearing Hutchins
			$40 100 00					

(*) SCHEDULE:

Frame Grand Stand	$10 000 00
Bleachers	500 00
Fencing	500 00
	$11 000 00

BURGLARY AND ROBBERY

B0355789	National Casualty Co	Burglary	$10 000 00	Expires 11-30-35
		Robbery	20 000 00	

FIDELITY BOND

147506	Aetna Casualty and Surety Co	$15 000 00	C E Martin, Treas	Date 9-1-29	Premium	$37 50

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PAGE

Complainant next offered in evidence "Plaintiff's Exhibit 5", being Title Page and pages 28, 29, 30, 31, 32, and 33 of the Regulations for students of the School of Technology at Atlanta, as follows:

BULLETIN

of the

GEORGIA SCHOOL

of

TECHNOLOGY

Vol. XXIX Dec. 1932 No. 5

REGULATIONS

for

STUDENTS

Published by the Georgia
School of Technology

Atlanta, Georgia

Entered at the Post Office at Atlanta, Ga., as Second Class Matter Under Act of Congress of July 16, 1894. Acceptance for mailing at special rate of postage provided in section 1103, Act of October 3, 1917 authorized.

* * * * * * * * * * * * *

46. Participation.

No person shall take part in any contest, performance, or other activity representing the Georgia School of Technology unless he is at that time duly enrolled in the institution. Students are subject to the following regulations:

a. No student shall participate in more than three activities of any kind during the year. Not more than two of these activities may be sports, except by Faculty permission. Not more than two activities may be participated in at any one time. See section 48b.

Activities shall count as follows: Football 1, Baseball 1, Track 1, Basketball 1, Golf 1, Swimming 1, Tennis 1, Lacrosse 1, Glee, Mandolin Club and Orchestra combined 1, and Dramatic Club 2.

b. Students will not be excused to participate in outside activities for at least one week before term examinations, and no contest, performance, dance or banquet shall be scheduled during this period.

c. All public performances, including fraternity and club dances and banquets are limited to Friday and Saturday afternoons and evenings, except by Faculty permission.

d. Students of the Georgia School of Technology shall not attend banquets given by or for them at

which alcoholic beverages are served to any one in any manner.

GENERAL ATHLETIC REGULATIONS

47. Eligibility.

A list of students desiring to participate in athletic activities must be submitted at the beginning of the season for approval to the Committee on Standings by the Faculty Chairman of Athletics. Before a student can participate in any athletic sport he must qualify under the following regulations.

a. No student who is carrying a schedule in less than 12 hours will be eligible to participate in intercollegiate athletics.

b. A student who is on probation for poor work or who has a excessive number of absences is ineligible for intercollegiate athletics unless otherwise ruled by the Committee on Standings.

c. Any student may be removed from the athletic list and declared ineligible for further participation in intercollegiate contests if in the opinion of the Committee on Standings, he has too full a schedule, or is doing exceptionally poor work in one major subject where the remainder of his schedule consists of easy courses.

d. No student will be eligible to participate in intercollegiate athletics subsequent to graduation from this institution unless he is a bona-fide candidate

for a Master's degree, to be received during the scholastic year in which he wishes to participate, and is otherwise eligible under the rules of the Southern Conference.

48. Participation.

Students taking part in any athletic sport are subject to the following rules:

a. No student will be excused from recitation for athletic practice.

b. No student will be allowed to participate in more than two sports in any scholastic year, except by Faculty action. Being manager or assistant manager of any team is counted as participating in that sport within the meaning of this rule.

c. No team will be allowed to leave the city to play any team other than that of an educational institution except by Faculty action.

d. During the scholastic year students will not be allowed to play on any team which does not represent officially the Georgia School of Technology.

e. All teams leaving the city will be accompanied by a representative of the Faculty.

f. No signs, writings, or drawings which unduly excite or affect, or tend to unduly excite or affect the feelings or resentment of any visiting team or student body shall be exhibited or posted on the athletic

field or grounds of the Georgia School of Technology during any intercollegiate athletic contest. The Faculty Chairman of Athletics is charged with the enforcement of this rule.

SPECIAL ATHLETIC REGULATIONS

49. Football.

a. The football team will be allowed to make 3 trips only; an intersectional trip, and 2 trips in Southern Conference territory.

b. A schedule of 9 collegiate games with a maximum of 4 working days absence is allowed.

c. Football candidates may sign out at 3:30 P. M. in September and October and at 3 P. M. in November.

d. The season ends the first Saturday after Thanksgiving Day.

50. Baseball.

a. A schedule of 26 collegiate games with a maximum of seven days absence is allowed, not more than 4½ days absence to be taken at one time.

b. The baseball season begins March 15th, and closes one week before the beginning of the final examinations.

c. All baseball games begin at 4 P. M. except on Saturdays and holidays, on which they begin at 3 P. M. No signouts are allowed.

51. Basketball.

a. A schedule of 16 games with a maximum of 5 working days absence is allowed.

b. During the examination period only one game is allowed, and this game must be played on Saturday.

52. Track.

A schedule of 8 spring and 3 winter meets, with a maximum of 5 working days absence is allowed. Meets are to be held on Friday and Saturday.

53. Tennis.

A schedule of 11 matches, including the school tournament, with a maximum of 5.5 days absence is allowed.

54. Swimming.

A schedule of 8 matches, including the school tournament, with a maximum of 5.5 days absence is allowed

55. Lacrosse.

A schedule of 10 games, with a maximum of 5.5 days absence is allowed.

56. Golf.

A schedule of 9 matches, including the school tournament, with a maximum of 5.5 days absence is allowed.

57. Freshman Teams.

a. Football. A schedule of 5 games with a maximum of 4 working days absence is allowed with signouts as in Section 49c.

b. Baseball. A schedule of 12 games with a maximum of 4½ working days absence is allowed. For time of games, etc., see Section 50.

c. Basketball. A schedule of 10 games with a maximum of 4 working days absence is allowed.

d. Track, Swimming and Lacrosse are allowed schedules of 5 contests each, with 2 working days absence allowed.

58. Any exceptions to the above athletic regulations, as to number of games, date of schedule, or time of play, must have the approval of the Faculty before the games are scheduled.

* * * * * * * * * * * * *

Complainant next offered in evidence "Plaintiff's Exhibit 4", being a specimen of the football admission ticket at the School of Technology, as follows:

ALABAMA - GEORGIA TECH
SATURDAY, NOVEMBER 17, 1934 - 2 P. M.

5 GRANT FIELD	5 SOUTH STAND	
Estab. Price $1.36	Gate 11	
	Sec. G	
*Tax .14 Total $1.50	Row 4	
(See other side)		
NON REDEEMABLE	Seat 24	

On reverse side of ticket was a diagram of Grant Field and the following:

*School of Technology being an Instrumentality of the Government of the State of Georgia, contends that it is not liable for any admission tax. The amount stated as a tax is so stated because the School of Technology is required to do so by Treasury Regulations pending a decision as to its liability in this respect. This amount is collected by the School of Technology as a part of the admission and will be retained as such unless it is finally determined that the School of Technology is itself liable for the tax.

* * * * * * * * * * * * *

Complainant next offered in evidence pages 171 and 172 of "Plaintiff's Exhibit 6", being the Athletic Department, as shown in the Bulletin of the School of Technology of Atlanta, published by the Faculty, for the year 1933-34, as follows:

THE GEORGIA TECH ATHLETIC ASSOCIATION

BOARD OF DIRECTORS
Faculty Members

Pres. M. L. Brittain, Chairman.
Dr. J. B. Crenshaw.
Prof. Floyd Field, Secretary-Treasurer.
Prof. A. H. Armstrong, Faculty Chairman of Athletics, Business Manager

Dean William V. Skiles
Dr. G. H. Boggs
Prof. T. H. Noel
W. A. Alexander, Advisory Member, Athletic Director.

ALUMNI MEMBERS

L. W. Robert
George W. McCarthy, Jr.
Robert T. Jones

STUDENT MEMBERS

H. C. Neblett, Captain 1932 Football Team.
Willard Turnbull, Editor of The Technique.
Iven Allen, Jr., President of Student Council.

COLLEGE ATHLETICS.

College Athletics at the Georgia School of Technology are managed by a Board of Directors consisting of six member of the Faculty, appointed by the President, who is ex-officio chairman of the Board; three alumni appointed by the president of the school; the President of the Student Council, the captain of the football team, and the editor of the Technique. This board aims to secure co-operation of the faculty and students in athletic affairs, to maintain the highest standards of sportsmanship, to give every student an opportunity to take part in some athletic activity. The liberal policy adopted by the Faculty toward athletics has resulted in such interest in college sports that the number engaged in some form of outdoor exercise is very large—over fifty per cent—and is increasing yearly.

TENNIS

The most popular addition made in recent years to the athletic equipment of the school was effected last year by the construction of eight splendid tennis courts, the best in Atlanta and the equal of any in the Southern Conference. These courts are open free of charge to students and faculty. More students are now participating in tennis than in any other sport.

FENCING

This sport, which is fostered by the R. O. T. C., is in reality a student club of young men who have been taught for the last three years by Prof. R. T. Morenus of the Department of Architecture.

HUGH INMAN GRANT FIELD

The liberality of Mr. John W. Grant of Atlanta, whose donations for this purpose have reached the sum of fifty thousand dollars, aided by gifts from other friends of the institution, have provided the school with an athletic field 900 feet long and 450 feet wide. This field has been named the "Hugh Inman Grant Field" as a memorial to Mr. Grant's son.

STADIUM

Upon this field has been developed a splendid U-shaped stadium 410 feet in length with locker-rooms, bath-rooms, stock-rooms, coaches' offices and a running track under cover for early spring practice. The total seating capacity, with temporary wooden stands

built in on the north end, is over 35,000. Grant Field, with its quarter mile track, its 220-yard straightaway, and this stadium, has been added to the equipment of the school at a cost of $350,000.

THE ROSE BOWL FIELD

In order to provide space for outdoor sports the Board of Directors of the Georgia Tech Athletic Association purchased at the close of the 1928 football season a new field 450 by 980 feet within three minutes walk of Grant Field. Thoroughly developed and equipped with a modern steel and concrete baseball stand, it provides space for two baseball fields, two football fields and a lacrosse field. To commemorate the victory over the University of California at Pasadena, New Year's Day, 1929, this field has been named "Rose Bowl Field."

* * * * * * * * * * * * *

Complainant next offered in evidence "Defendant's Exhibit 3", being the Report of the Examination of the Accounts of the Georgia Tech Athletic Association for the six months ended December 31, 1934, as follows:

DEFENDANT'S EXHIBIT 3

GEORGIA TECH ATHLETIC ASSOCIATION

REPORT ON
EXAMINATION OF ACCOUNTS
FOR THE SIX MONTHS ENDED
DECEMBER 31, 1934

HASKIN & SELLS

HASKIN & SELLS
Accounants

Healey Building
Atlanta

February 13, 1935.

Georgia Tech Athletic Association,
Atlanta, Georgia.

Dear Sirs:

We have made an examination of your accounts for the six months ended December 31, 1934, and present our report consisting of the following financial statements, our certificate, and comment:

Balance Sheet, December 31, 1934 (Exhibit A).

Statement of Income and Expenses For the Six Months Ended December 31, 1934 (Exhibit B).
Expenses - Football, Basket-ball, Baseball, Track, Minor Sports, and Intramural Sports (Schedule 1).

Statement of Cash Receipts and Disbursements For the Six Months Ended December 31, 1934 (Exhibit C).

The property valuations are based on an appraisal made by Jesse M. Shelton, Architect, as of January 1, 1931, plus subsequent net additions at cost. (The property is owned by the University System of the State of Georgia and is carried on the books of the Association for memorandum purposes only.)

The Association has not paid the Federal tax on admissions to football and basket-ball games for the years 1933 and 1934, and contends that as an instrumentailty of the State of Georgia it is not liable for such tax. However, the net amount of the tax; $23,423.66, has been deposited in special bank accounts pending the outcome of the litigation. We were informed by Professor A. H. Armstrong, Business Manager, that the Court has ruled that the Association is not liable in any event for penalties arising from failure to pay this tax when due.

The Association has a liability of an undetermined amount to the Georgia School of Technology for supplies, food, etc., furnished to the Association during the past several years. The amount of this liability, when determined, will be applied as an offset to the advance of $20,000.00 made to the Georgia School of Technology. A reserve for contingencies of $15,000.00 has been provided, which, in the opinion of Professor Armstrong, is adequate to cover this liability.

In our opinion, subject to the foregoing, the accompanying balance sheet, related statement of income and expenses, and statement of cash receipts and disbursements, with the notations thereon, fairly present your financial condition at December 31, 1934, the results of your operations, and your cash receipts and disbursements, as recorded, for the six months ended December 31, 1934.

CASH - $22,658.21

The cash on hand was counted, and that on deposit was verified by certifications obtained from the depositary.

As shown in Exhibit A, the above amount includes $23,731.71 on deposit with The First National Bank of Atlanta, Georgia, in special tax accounts. Of this amount $23,423.66 is being retained pending the final determination of the liability of the Association for Federal tax on admissions, and $308.05 represents interest credited by the bank.

ACCOUNTS RECEIVABLE (employees, etc.) - $340.77

The accounts receivable at December 31, 1934, were as follows:

Name	Amount
A. H. Armstrong (Business Manager)	$100.82
Charles M. Griffin (Asst. Business Mgr.)	25.90
Others:	
R. H. Martin	36.00
J. W. Morgan	3.75
C. H. Roberts	3.93
Southeastern Conference	.74
Alfred E. Thompson	90.00
University of Georgia	79.63
Total	$340.77

Checks were received in January, 1935, in payment of the accounts of the University of Georgia and Mr. J. W. Morgan. The other accounts were verified by confirmations received from the debtors.

GEORGIA SCHOOL OF TECHNOLOGY
$20,000.00

This amount was advanced by check dated May 8, 1928, to the Georgia School of Technology as authorized by the Athletic Board on February 8, 1928. The advance was to be non-interest bearing and payable in full or in part at the expiration of three years. The advance matured May 8, 1931, and to the date of this report no collections have been received.

As an offset against the advance, the Association has an unrecorded liability of an undetermined amount for supplies, food, etc., furnished by the school to the Association during the past several years. We were informed by Professor Armstrong that no statements showing the amount of the liability had been received from the school, and at his request we did not attempt to ascertain the amount thereof, or to confirm the amount of the advance. However, in his opinion the reserve for contingencies, amounting to $15,000.00 (see comments, Page 7), is adequate to cover the liability to the school for supplies, food, etc.

PROPERTY - $771,892.52

The property valuations are based on an appraisal made by Jesse M. Shelton, Architect, as of January 1, 1931, plus subsequent net additions at cost. The

property is owned by the University System of the State of Georgia and is carried on the books of the Association for memorandum purposes only.

BUILDINGS, STANDS, ETC., - GRANT FIELD - $310,580.00

The North Stands, which were of wooden construction, were dismantled during the six months ended December 31, 1934. Following is a summary of the changes in the account:

Balance, June 30, 1934			$317,900.00
Deduct:			
North Stands:			
As appraised	$ 6,000.00		
Incidental costs, 6%	360.00	$6,360.00	
Basket-ball court (destroyed by fire in 1931):			
As appraised	$16,000.00		
Incidental costs, 6%	960.00		
Total	$16.960.00		
As written off in 1931	16,000.00	960.00	
Total [charged against the investment account]			7,320.00
Balance, December 31, 1934			$310,580.00

IMPROVEMENTS - GRANT FIELD - $44,502.00

Following is a summary of the changes in the account:

Balance, June 30, 1934		$ 49,802.00
Deduct - Temporary stands dismantled:		
As appraised	$5,000.00	
Incidental costs, 6%	300.00	
Total [charged against the investment account]		5,300.00
Balance, December 31, 1934		$ 44,502.00

NOTES PAYABLE - $70,471.16

THE FIRST NATIONAL BANK OF ATLANTA, ATLANTA, GEORGIA - $31,401.33

These notes, bearing interest at the annual rate of 6%, were as follows:

Date	Maturity	Amount
July 2, 1934	Aug. 1, 1934	$30,000.00
Dec. 17, 1934	Demand	904.00
*Dec. 27, 1934	Jan. 26, 1935	497.33
Total		$31,401.33

*Personal note of Professor A. H. Armstrong and Charles M. Griffin given for the account of the Association.

The accrued interest on the above notes at December 31, 1934, amount to approximately $75.00, is not

recorded on the books or included in the accompanying statements.

As security for these notes, the bank holds an assignment of the Association's share of the football gate receipts, including advance sales of tickets, for all seasons until this indebtedness, or any renewal thereof, is paid.

PETERS LAND CO. - $23,250.00

This amount is the balance due on two notes dated September 1, 1928, for $16,250.00 each, covering the purchase of land on which Rose Bowl Field is located. The notes matured on September 1, 1931 and September 1, 1932, but continue to bear interest at the annual rate of 5%.

The balance due on the notes, $23,250.00, and the accrued interest thereon, $7,501.22, at December 31, 1934, were verified by correspondence with the holder of the notes.

During the six months ended December 31, 1934, the principal amount of the notes was reduced $4,500.00

SALARIES - $8,935.02

The following salaries represented by non-negotiable, non-interest bearing notes of the Association were unpaid December 31, 1934.

Name		Amount
A. H. Armstrong		$1,125.00
Charles M. Griffin		250.00
Mrs. R. L. Williamson		300.00
W. A. Alexander:		
Salary	$4,800.00	
Jack Cannon [assigned]	125.00	
R. L. Dodd [assigned]	290.00	5,215.00
R. L. Dodd		305.00
Roy Mundorff		400.00
Mack Tharpe		200.00
Geo. C. Griffin		690.00
Kenneth Thrash		150.02
J. D. Smith		200.00
H. F. Bartlett		100.00
Total		$8,935.02

These notes were confirmed by correspondence with the holders thereof.

OTHER - $6,884.81

These notes were as follows:

Payee	Date	Maturity	Interest Rate	Amount
W. A. Alexander,	Jan. 31, 1933	Demand	None	$ 100.00
"	Feb. 28, 1934	Demand	"	122.33
A. G. Spalding & Bros.,	Jan. 12, 1935	Oct. 1, 1935	6%	6,250.98
"	"	"	6%	411.50
	Total			$6,884.81

The notes of A. G. Spalding & Bros., while dated January 12, 1935, were issued as of December 31, 1934.

ACCOUNTS PAYABLE - $15,697.71

GEORGIA SCHOOL OF TECHNOLOGY
(Georgia Tech Emergency Loan Fund) - $1,212.53

This amount represents the liability of the Association to the Georgia Tech Emergency Loan Fund for collections received from concessions during the 1934 football season. At the date of this report no collections had been received by the Association from the football program concession. We were informed that payment for this concession had been made direct to the loan fund by Mr. Charles M. Griffin.

JESSE M. SHELTON (Plans - new gymnasium) $4,700.00

This amount covers the balance due to Jesse M. Shelton, Architect, for plans for a new gymnasium.

FEDERAL TAX ON ADMISSIONS - $23,423.66

This amount represents the tax on admissions to football games and basket-ball games for the years 1933 and 1934, which has not been paid to the Federal Government. Although the Federal tax on admissions was paid for the year 1932, the Association contends that it is not liable for the tax collected for the 1933 and 1934 seasons. However, the amount of the tax

has been deposited in special bank accounts pending the final determination of the matter. We were informed by Professor Armstrong that the Court has ruled that the Association is not liable in any event for penalties arising from failure to pay this tax when due.

RESERVE FOR CONTINGENCIES - $15,000.00

This amount has been provided by the Association chiefly for an undetermined liability to the Georgia School of Technology for supplies, food, etc., furnished to the Association during the past several years.

GENERAL

Following is a summary of the insurance in force at December 31, 1934, as evidenced by policies submitted for our inspection:

Fire:	
Grant Field - Uniforms and athletic equipment	$13,000.00
Radio broadcasting room and equipment [fire, $10,000; theft, $4,000.00]	14,000.00
Furniture and fixtures	4,500.00
Trophies	1,500.00
Automobile truck [fire and theft]	Actual cash value
Liability [maximum]:	
Automobile truck	$20,000.00
Public	20,000.00
Builders' risk - Naval Armory	10,000.00
Burglary:	
Safe	2,000.00
Trophies	1,252.00
Casualty [A. H. Armstrong]	10,000.00

Fidelity bonds were carried on officers and employees, as follows:

Name	Amount
A. H. Armstrong [Business Manager]	$10,000.00
Floyd Field [Secretary and Treasurer]	5,000.00
Charles M. Griffin [Assistant to Business Manager]	5,000.00
Mrs. R. L. Williamson [Bookkeeper]	5,000.00

The unexpired premiums on the foregoing policies and bonds, amounting to approximately $665.00 at December 31, 1934, are included in the expenses of the Association.

The books and records were accurately and neatly kept, and we received the full co-operation of the officers and employees of the Association during our examination.

Yours truly,

(Signed) HASKIN & SELLS.

EXHIBIT A

GEORGIA TECH ATHLETIC ASSOCIATION

BALANCE SHEET, DECEMBER 31, 1934

ASSETS

CASH:			
On hand [petty cash fund]		$ 478.95	
On deposit - The First National Bank of Atlanta, Atlanta, Georgia:			
Regular account [overdraft]		1,552.45	
Tax account	$15,973.99		
Tax account [1933-1935]	7,757.72	23,731.71	$ 22,658.21
ACCOUNTS RECEIVABLE [employees, etc.]			340.77
GEORGIA SCHOOL OF TECHNOLOGY - ADVANCE MADE MAY 8, 1928 [see notation]			$ 20,000.00
PROPERTY [based on appraisal made by Jesse M. Shelton, Architect, as of January 1, 1931, plus subsequent net additions at cost; owned by the University System of the State of Georgia, and carried on the books of the Association for memorandum purposes only]:			
Land			$254,400.00
Buildings, stands, etc:			
Grant Field			310,580.00
Rose Bowl Field			74,200.00
Improvements:			
Grant Field		44,502.00	
Rose Bowl Field		42,559.00	
Tennis Courts		7,526.43	
Athletic equipment		25,452.00	
Small tools, etc.		4,371.75	

Office furniture and fixtures	2,386.63	
Plans - New gymnasium	5,000.00	
Naval Armory	914.71	771,892.52
TOTAL		$814,891.50

LIABILITIES

NOTES PAYABLE:		
The First National Bank of Atlanta, Atlanta, Georgia [future football receipts pledged as security]	$ 31,401.33	
Peters Land Co. [two 5% notes dated September 1, 1928; past due]	23,250.00	
Salaries	8,935.02	
Other	6,884.81	$ 70,471.16
ACCOUNTS PAYABLE:		
Georgia School of Technology [Georgia Tech Emergency Loan Fund]	$ 1,212.53	
Jesse M. Shelton [Plans - New gymnasium	4,700.00	
Other	9,785.18	15,697.71
ACCRUED INTEREST - PETERS LAND CO.		7,501.22
FEDERAL TAX ON ADMISSIONS [see notation]		23,423.66
RESERVE FOR CONTINGENCIES [see notation]		15,000.00
INVESTMENT ACCOUNT, PER EXHIBIT B [see notation]		682,797.75
TOTAL		$814,891.50

NOTATIONS: The property of the Association is owned by the University System of the State of Georgia. The property and investment ac-

counts are carried on the books of the Association for record purposes only.

The Georgia Tech Athletic Association has not paid the Federal tax on admissions to football and basket-ball games for the years 1933 and 1934, and contends that as an instrumentality of the State of Georgia it is not liable for such tax. However, the net amount of the tax, $23,423.66, has been deposited in special bank accounts pending the outcome of the litigation. We were informed by Professor A. H. Armstrong, Business Manager, that the Court has ruled that the Association is not liable in any event for penalties arising from failure to pay this tax when due.

(Continued)–1.

The Association has a liability of an undetermined amount to the Georgia School of Technology for supplies, food, etc., furnished to the Association during the past several years. The amount of this liability, when determined, will be applied as an offset to the advance of $20,000.00 to the Georgia School of Technology. A reserve for contingencies of $15,000.00 has been provided, which, in the opinion of Professor Armstrong, is adequate to cover this liability.

EXHIBIT B

GEORGIA TECH ATHLETIC ASSOCIATION

STATEMENT OF INCOME AND EXPENSES FOR THE SIX MONTHS ENDED DECEMBER 31, 1934

INCOME:		
Football:		
Sales of tickets	$ 74,168.51	
Guaranties received	44,798.29	$118,966.80
Sale of band uniforms and instruments		250.00
Rental of Grant Field		30.00
Interest on bank balances		189.95
TOTAL		$119,436.75
EXPENSES:		
Schedule 1:		
Football		$ 59,648.34
Basket-ball		327.60
Baseball		751.80
Track		236.75
Minor sports		120.30
Intramural sports		306.10
Training and equipment room		2,747.41
Yellow Jacket Club		115.18
Salaries		16,864.50
Interest		2,119.07
Insurance premiums	776.61	
Auditing	125.00	
Dues and subscriptions	135.00	
Light, heat, and water	406.98	
Office supplies and expenses	498.41	
Telephone and telegraph	208.18	
Traveling expenses	135.00	
Laundry	626.15	

Federal tax on checks	8.50	
Miscellaneous	58.10	
TOTAL		85,914.98
INCOME IN EXCESS OF EXPENSES		$ 33,521.77
INVESTMENT ACCOUNT, JUNE 30, 1934		661,895.98
TOTAL		$695,417.75
DEDUCT - PROPERTY DISMANTLED AND REMOVED, WRITTEN OFF:		
North Stands, etc.	$ 7,320.00	
Temporary stands	5,300.00	12,620.00
INVESTMENT ACCOUNT, DECEMBER 31, 1934 (see notations on Exhibit A)		$682,797.75

EXHIBIT C

GEORGIA TECH ATHLETIC ASSOCIATION

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS FOR THE SIX MONTHS ENDED DECEMBER 31, 1934

BALANCE, JUNE 30, 1934		$ 16,138.38
RECEIPTS:		
Football	$127,002.72	
Sale of band uniforms and instruments	250.00	
Rental of Grant Field	30.00	
Interest on bank balances	189.95	
Concessions	2,500.00	
Notes payable	1,097.33	

TOTAL		131,07
Total balance and receipts		$147,20
DISBURSEMENTS:		
Football	$ 46,427.08	
Track - Net	131.25	
Minor sports	10.50	
Training and equipment room	25.95	
Salaries	16,354.50	
Interest	565.75	
Light, heat, and water	406.98	
Office supplies and expenses	90.53	
Telephone and telegraph	208.18	
Traveling - General	10.00	
Federal tax on checks	8.50	
Accounts payable	11,025.80	
Notes payable	42,938.37	
Equipment - Naval Armory	914.71	
Personal advances (Georgia Tech Emergency Loan Fund)	2,571.70	
Automobile allowance	125.00	
Insurance	58.02	
Change funds [used for payment of football payroll]	1,212.05	
Grant Field:		
Labor	1,642.07	
Material	24.51	
Accounts receivable - Net	46.12	
Sundry	15.10	
TOTAL		124,550
BALANCE:		
On hand [petty cash fund]	$ 478.95	
On deposit - The First National Bank of Atlanta, Atlanta, Georgia:		
Regular account [overdraft]	1,552.45	
Tax account	15,973.99	
Tax account [1934-1935]	7,757.72	$ 22,658

SCHEULE 1

GEORGIA TECH ATHLETIC ASSOCIATION

EXPENSES - FOOTBALL, BASKET-BALL, BASE-BALL, TRACK, MINOR SPORTS, AND IN-TRAMURAL SPORTS FOR THE SIX MONTHS ENDED DECEMBER 31, 1934

FOOTBALL:		
Entertainment		$ 377.33
Equipment		6,534.93
Fees and expenses of officials		1,569.45
Guaranties paid to other schools		32,342.21
Insurance		761.80
Maintenance of playing fields:		
Labor	$ 762.84	
Materials	1,642.07	2,404.91
Medical expenses		997.65
Pay-rolls		2,368.85
Postage		273.50
Printing, stationery, office supplies, etc.		1,362.54
Publicity		323.00
Scouting		600.16
Traveling		8,790.94
Trophies		46.40
Tutoring		829.50
Miscellaneous		65.17
TOTAL		$ 59,648.34
BASKET-BALL:		
Equipment		314.65
Miscellaneous		12.95
TOTAL		$ 327.60
BASEBALL - EQUIPMENT		$ 751.80

TRACK:		
Equipment	$	373.00
Trophies		3.00
Traveling expense refund		133.25
TOTAL	$	236.75
MINOR SPORTS:		
Golf - Miscellaneous	$	18.90
Swimming - Miscellaneous		.50
Tennis - Miscellaneous		100.90
TOTAL	$	120.30
INTRAMURAL SPORTS - EQUIPMENT	$	306.10

Complainant next offered in evidence Exhibits F and G to the bill of Complaint, being original Bulletins of the University of Georgia, which are printed elsewhere in the record, appearing on pages 25 and 38.

* * * * * * * * * * * *

Complainant next offered in evidence "Plaintiff's Exhibit 8", being the By-Laws of the University of Georgia Athletic Association in effect during 1934, as follows:

Plaintiff's Exhibit 8

BY-LAWS
of the
UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION

1
PURPOSES

The purposes and functions of the Association shall be as stated in its charter.

2
MEMBERSHIP

The membership of the corporation shall consist of the petitioners for the charter and of such other persons as may be hereafter admitted to membership, which shall automatically include any person hereafter made members of the Board of Directors or Executive Board, hereinafter provided for. Students of the University of Georgia (by which is meant in this connection, Franklin College, the State College of Agriculture and the Mechanic Arts, and the Georgia State College of Agriculture), in good standing, and whose dues or fees to the Association, in the event dues or fees are required by the Trustees of the University or the Faculty, are paid, shall be members in the sense that they shall be entitled to the benefits resulting to students from the operation of the Association, but shall not be members in the sense of having a vote in the

management or control of the affairs of the Association.

3

THE BOARD OF DIRECTORS

The affairs and business of the Association shall be under the control of a Board of Directors, which shall consist of the petitioners for the charter, and of such other directors as may be selected and qualified from time to time. The said Board shall have general control of the business and affairs of the Association; subject, however, to the express provision that all operations of the Association shall be subject to the the control and direction of the Chancellor of the University and the Board of Trustees of the University of Georgia, said Board of Directors, or the Executive Board hereinafter named, shall have authority to contract debts in behalf of the Association, to authorize the issuance of bonds in its behalf, and to pledge the credit and property of the Association for the payment of its debts.

4

MEMBERSHIP IN THE BOARD OF DIRECTORS

Said Board of Directors, as first constituted, shall consist of the petitioners for the charter. The Board of Directors thus constituted shall have authority to select, from time to time, successors to any directors dying, retiring, or being removed, and to increase the membership by the election of additional directors. The membership of the Board of Directors shall serve for life; subject, however, to the provisions that any

member of the Board may be removed therefrom, with or without cause, by a vote of the majority of the Board, by which is meant a majority of all the members of the Board, or may similarly be removed by a written order of the Chancellor of the University, or by action of the Board of Trustees of the University of Georgia. The Chancellor of the University shall be President of the Board of Directors, and there shall be a Vice-President, elected by the Board, who shall serve as President in the latter's absence. The Board shall meet once a year, and at other times when called by the President, or by direction of the Executive Board. Three days' written notice by mail shall be given of such meetings. Depositing the letters in the mail, addressed to the last address of the members as shown by the records of the Association, shall be sufficient.

5.
EXECUTIVE BOARD

There shall be an Executive Board, constituted as follows: The Chancellor of the University, the President of the Georgia State College of Agriculture, and the Dean of the University, shall be ex-officio members of the Executive Board. The Chancellor shall designate, from time to time, at his pleasure, three members of the faculty, in addition to the foregoing, who shall also be members of the Executive Board. Three Trustees of the University of Georgia, to be designated by the Board of Trustees from time to time, at the pleasure of the Board, shall also be members of the Executive Board. In addition to the foregoing, there shall be five alumni members of the Executive Board, two from Athens, and three not from Athens,

and one member of the Board from Athens who is not an alumnus; all of whom shall be designated by the Directors of the Athletic Association to continue in office at the pleasure of the Directors, and until their successors are elected. The Executive Board shall be competent to function whenever its membership shall consist of a majority of those hereinabove designated, and a majority of the existing membership, at any time, shall be competent to act. The Executive Board shall exercise all the powers of the Directors of the Association whenever the Directors are not in session. The Chancellor of the University shall be Chairman of the Executive Board, and the Board shall name a Vice-Chairman, who shall serve as Chairman in the latter's absence. The Board shall meet when called by the Chairman. It shall be the duty of the Chairman to endeavor to give notice to all members of the Board, but meetings shall be valid whether actual notice has been delivered or not, provided a majority of the Board assembles, and an effort has been made, at least, twenty-four hours before that time, to notify all members.

6.
OFFICERS OF THE ASSOCIATION

The President of the Board of Directors shall be President, and the Board shall elect a Secretary of the Athletic Association, which selection shall be made from those who are also members of the Executive Board. The Secretary shall hold office at the pleasure of the Board of Directors, and the President and Secretary shall perform such duties as are usually incidental to similar officers in similar associations. They

may sign contracts, notes, and bonds, as directed by the Directors or the Executive Board, but either of these bodies may designate other persons to sign such instruments in behalf of the Association.

There shall also be a Treasurer of the Athletic Association, to be designated by the Executive Board, who shall have general charge of the funds of the Association. It is expressly provided, however, that the detailed operations of the Association, the handling of receipts from games and exhibitions, the payment of its operating expenses, and similar matters, shall be handled by the Faculty Chairman of Athletics of the University of Georgia, and by such associates and assistants as the Chancellor of the University may from time to time direct, who shall make an annual report to the Treasurer of the Association, with a statement of what surplus is available for investment or for payment on notes or bonds of the Association, and shall remit such surplus to the Treasurer for this purpose. The current handling of the funds of the Association may be through the Treasurer of the University of Georgia. There shall be an annual audit of the finances of the Association, which shall be made, if possible, by the State Auditor of the State of Georgia; and in the event this is not feasible, by an accountant to be designated by the Executive Board, which said annual audit shall be laid before the members of the Executive Board of the Association.

7.
AMENDMENTS

These by-laws may be amended by a majority vote

at any meeting of the Directors, by which is meant a majority of all members of the Board; provided, that the notice calling such meeting shall specify in general the nature of the amendment to be considered.

Complainant next offered in evidence "Plaintiff's Exhibit 9", being Minutes showing a Resolution of the Board of Regents of the University System, held April 10, 1935, to which offer defendant objected for the reasons that it is irrelevant, immaterial, and incompetent; it is not binding on the defendant; it purports to be a resolution directing the State Auditor to make an examination of certain records of the Athletic Association involved in this proceeding, undoubtedly pursuant to the authority contained in an Act of the Legislature adopted in 1935, after the period involved in this suit, and after this suit was instituted. This objection was overruled by the Court, to which ruling of the Court defendant did then and there except. "Plaintiff's Exhibit 9", so offered and received in evidence, is as follows:

PLAINTIFF'S EXHIBIT 9

"EXCERPTS FROM MINUTES OF MEETING OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA HELD APRIL 10, 1935:

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"Upon motion of Regent Ault, seconded by Regent Dunwody and unanimously carried, the following resolution was adopted:

"RESOLVED that the State Auditor is requested by this Board, as a part of his auditing of the University System of Georgia, to audit also the Athletic Associations at the University of Georgia at Athens and the Georgia School of Technology at Atlanta, which said Athletic Associations have been and are, with the consent of the Board of Regents, conducting the athletic activities of said institutions. This request for an audit is to continue so long as said associations are continued by this Board for said purpose and until otherwise ordered.' "

Complainant next offered in evidence "Plaintiff's Exhibit 10", being claim for refund as follows:

PLAINTIFF'S EXHIBIT 10

Treasury Department
Internal Revenue Service
Form 843 - Jan. 1922
Comptroller General U. S.
Jan. 18, 1922

Collector's Notation
District

CLAIM FOR
X REFUND OF TAXES ILLEGALLY COLLECTED

320

STATE OF GEORGIA,)
) ss:
COUNTY OF FULTON)

Type or Print: Georgia Tech Athletic Association, a department of the Georgia School of Technology, in turn a branch of the University of Georgia (name of Taxpayer).

North Avenue, Atlanta, Georgia

This deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below with reference

to said statement are true and complete:

1. Business in which engaged: See statement below; not engaged in business.

2. Character of assessment or tax—Admissions to athletic contests. Period From From

3. Amount of assessment or stamps purchased.....$

4. Reduction of Tax Liability requested (Income and Profit Tax).....$

5. Amount to be abated $11,181.62, plus 6% from dates of payment

6. Amount to be refunded (or such greater amount as is legally refundable) $11,181.62 plus 6%

7. Dates of payment (see Collector's receipts or indorsements of canceled checks (If statement covers income tax liability, items 8-11 inclusive must be answered.)

Nov. 14, 1932	$1,230.69
Nov. 29, 1932	3,880.68
Dec. 8, 1932	5,848.80
Feb. 14, 1933	158.33
Feb. 28, 1933	63.12
	$11,181.62

8. District in which return (if any) was filed Atlanta, Georgia

321

11. Unpaid assessment against which credit is asked; period from Deponent verily believes that this application should be allowed for the following reasons:

This claim for refund is filed on behalf of and by the Georgia Tech Athletic Association, which is simply a department of the Georgia School of Technology, which in turn is a branch of the University of Georgia, which in turn is one of the educational branches or political subdivisions of the State of Georgia.

The taxes above set out were collected by J. T. Rose, Collector of Internal Revenue for the Atlanta, Georgia, district, based on admissions paid to the Georgia Tech Athletic Association covering athletic contests, to-wit, football games, etc., between teams representing Georgia School of Technology and teams of other Universities. The athletic program of intercollegiate contests is a part and parcel of the educational functions of the Georgia School of Technology. The admissions charged for athletic contests do not inure to the benefit of any person or group of persons, but go into the funds of the Athletic Department known as the Georgia Tech Athletic Association and help to defray the expenses of intercollegiate as well as intermural athletics under the physical training program of the Athletic Department.

The educational system, of which the University of Georgia, including the branch known as the Georgia School of Technology and its department known as the Georgia Tech Ath-

letic Association, is an instrumentality or political subdivision of the government of the State of Georgia and as such can not be taxed by Congress or by the Federal Government. The tax collected, therefore, was illegally collected, for the stated reason that it was tax on an instrumentality or political subdivision of the government of the State of Georgia.

It is the contention of taxpayer that the Revenue Act of 1932, Section 711, is not intended to impose a tax on an instrumentality or political subdivision of the State government. If the Act be so construed, however, it is taxpayer's contention that the same is invalid and unconstitutional as exceeding the taxing power of Congress.

It is not intended by using the name "taxpayer" in this claim for refund to waive any rights or to describe the characteristics or the status of the Georgia School of Technology, the word "taxpayer" being used merely for convenience.

Sworn to and subscribed
before me this 26th day
of June, 1933.

(sgd) Florence England,
Notary Public, Fulton County,
Georgia.

(Signed: GEORGIA SCHOOL OF
TECHNOLOGY (SEAL)
By: M. L. Brittain,
President.

Complainant next offered in evidence "Plaintiff's Exhibit 11", being letter from the Commissioner of Internal Revenue addressed to Georgia Tech Athletic Association, Georgia School of Technology, dated October 11, 1933, as follows:

PLAINTIFF'S EXHIBIT 11

"TREASURY DEPARTMENT
Washington

Oct. 11, 1933

Georgia Tech Athletic Association,
Georgia School of Technology,
Atlanta, Georgia.

Attention: Mr. M. L. Brittain

Gentlemen:

Reference is made to the claim filed by you for refund of $11,181.62, tax paid on admissions to athletic contests under the provisions of section 500 (a) of the Revenue Act of 1926 as amended by section 711 (a) of the Revenue Act of 1932.

It is contended that the association is a department of the School of Technology which is a branch of the University of Georgia, and that the university is an educational department or political subdivision of the State of Georgia and exempt from taxation.

Subdivision (e) of section 500 of the Revenue Act of 1926, which was added by section 711 (c) of the

Revenue Act of 1932, provides that the exemption from tax provided by subdivision (b) (1) shall not be allowed in the case of admissions to any athletic game or exhibition, the proceeds of which inure wholly or partly to the benefit of any college or university (including any academy of the military or naval forces of the United States.)

Section 500(a) of the Revenue Act of 1926 as amended by section 711 (a) of the Revenue Act of 1932, which imposes a tax on the amount paid for admission to any place is the admission charge exceeds 40 cents, specifically provides that the tax shall be paid by the persons paying the admission charges. Thus the tax does not fall upon the university or the athletic association but upon the persons admitted to the athletic events and the university merely acts as collecting agency in collecting the tax due and paying it over to the collector of internal revenue. The admission charges and the free or complimentary admissions to the athletic contests of the Georgia Tech Athletic Association are therefore properly subject to tax. The evidence on file shows that the tax claimed in refund was collected from the persons admitted to the contests and was not paid from the funds of the association or the university.

The claim is therefore rejected in full.

Respectfully,

Guy T. Helvering,
Commissioner.

By

(sgd) D. S. Bliss,
Acting Deputy Commissioner."

RR:RLS
cc-Atlanta, Georgia.

Complainant next offered in evidence "Plaintiff's Exhibit 12", being letter dated April 26, 1934, from the Commissioner of Internal Revenue to Georgia Tech Athletic Association, Georgia School of Technology, as follows:

PLAINTIFF'S EXHIBIT 12

Apr 26 1934

Georgia Tech Athletic Association,
Georgia School of Technology
c/o Harold Hirsch & Marion Smith,
701 Hurt Building,
Atlanta, Georgia.

Gentlemen:

Reference is made to the claim filed by you for refund of $11,181.62, tax paid on admissions for the months of November, 1932 to February, 1933, inclusive.

The tax in question was collected from the public on admission charges to athletic events, the proceeds of which inured to the benefit of the Association, a department of the Georgia School of Technology, which is a branch of the University of Georgia.

It is contended that the University of Georgia is a political subdivision of the State of Georgia; that the athletic program of intercollegiate contests is a part of the educational function of the school; that the tax is unconstitutional since it applies to a State

agency; and that the imposing of a tax upon persons purchasing tickets to football contests curtails the revenue realized by collecting agency and thus hinders the exercise of the governmental function.

"Section 500 (a) (1) of the Revenue Act of 1926, as amended by section 711 (a) of the Revenue Act of 1932, imposes a tax of 1 cent for each 10 cents or fraction thereof of the amount paid for admission to any place, including admission by season ticket or subscription, to be paid by the person paying for such admission.

Thus the tax is imposed upon the persons paying the admission charges and not upon the persons collecting the admission charges to the athletic contests or other events.

Section 500 (b) (1) (a) of the Revenue Act of 1926 provides that no tax shall be levied under this title in respect of any admissions all of the proceeds of which inure exclusively to the benefit of religious, educational, or charitable institutions, if no part of the net earnings thereof inures to the benefit of any private stockholders or individuals. Section 500 (b) of the Revenue Act of 1926 was amended by section 711 (c) of the Revenue Act of 1932 to provide that the exemption from tax provided by subdivision (b) (1) shall not be allowed in the case of admissions to any athletic game or exhibition, the proceeds of which inure wholly or partly to the benefit of any college or university (including any academy of the military or naval forces of the United States.) No exemption was made in the case of colleges or universities which are maintained in part from funds of a State.

Since the tax in question was collected from the public and was not paid from the funds of the Georgia Tech Athletic Association or the Georgia School of Technology, the burden of tax was not borne by the University of Georgia. The fact that the addition of an item of tax to the admission charge may possibly have resulted in the sale of fewer tickets of admission does not result in placing the burden of tax directly upon the University or its branches.

It is held that the tax in question was properly collected and paid over to the collector of internal revenue and the claim is therefore rejected in full.

Respectfully,

Guy T. Helvering,
Commissioner.
By (sgd) Adelbert Christy,
Acting Deputy Commissioner.

cc-Atlanta, Georgia
cc-Files
WJR/DEE

cc-Georgia Tech Athletic Assn.,
Georgia School of Technology,
North Avenue,
Atlanta, Georgia."

Thereupon, Complainant rested its case.

Complainant having rested its case, defendant presented his Motion to Dismiss the Bill of Complaint

upon the specific grounds therein stated. The Motion to Dismiss was submitted without argument, and the Court reserved its ruling.

DEFENDANT'S CASE

Thereupon, the following facts were stipulated and agreed to by council for the respective parties and read into the record, as follows:

The defendant, W. E. Page, was appointed United States Collector of Internal Revenue on June 20, 1933, and ever since than has been Collector of Internal Revenue for the District of Georgia; during all of the said time he was and now is a resident of the Northern District of Georgia, and his official residence is Atlanta.

No returns for admissions tax on admissions to athletic events held at the University of Georgia and Georgia Tech under the auspices of the University of Georgia Athletic Association and Georgia Tech Athletic Association, during September and October, 1934, were ever made and filed with the Collector of Internal Revenue. Returns, covering the amount of $895.37 for claimed admissions tax on admissions at the University of Georgia and $3,914.63 at Georgia Tech, were prepared by the Collector of Internal Revenue. Neither of those amounts claimed by the Collector as tax have been paid.

Defendant next introduced in evidence "Defendant's Exhibit 2", being copy of the application for charter

of Georgia Tech Athletic Association, and the Order of the Court on such application, as follows:

DEFENDANT'S EXHIBIT 2

"Georgia, Fulton County.

TO THE SUPERIOR COURT OF SAID COUNTY:

The petition of M. L. Brittain, W. V. Skiles, J. B. Crenshaw, G. H. Boggs, Floyd Field, A. H. Armstrong, T. W. Noel, W. A. Alexander, L. W. Robert, Jr., R. T. Jones, Jr., George W. McCarty, Jr., Oscar Davis, I. L. Kuniansky, B. L. Mattingly, R. H. Tharpe and E. E. Laws, all of Fulton County, Georgia, respectfully shows to the court:

1. That your petitioners desire for themselves, their associates, successors and assigns to be incorporated and made a body politic under the laws of the State of Georgia and under the name and style of

GEORGIA TECH ATHLETIC ASSOCIATION

for a period of twenty (20) years with the privilege of renewal at the expiration of said time.

2. That the principal office and place of business of said corporation shall be in Fulton County, Georgia, but petitioners desire the right for said corporation to establish branch offices within this State or elsewhere whenever a majority of the directors of the corporation shall so determine.

3. That said corporation shall have no capital stock.

4. That the object of said corporation is not pecuniary gain or profit to its members but is to promote the general welfare of the student body of The Georgia School of Technology by affording facilities and encouraging participation in healthful exercises, recreation, athletic games and contests.

5. That petitioners desire for said corporation the right and power to do all things necessary or incidental to the accomplishment of such purposes, including, without limitation, the right and power:

(a) To purchase, lease, receive, own, sell and generally trade in and deal with real property, both improved and unimproved.

(b) To improve real property by erecting thereon buildings and stadia, and by generally making the same suitable and useful for exercise, recreation and athletic games and contests.

(c) To purchase and otherwise acquire personal property of all kinds and particularly to purchase and provide for its members, equipment for participating in athletic games and contests.

(d) To arrange, hold and conduct athletic games and contests in its own stadia and buildings and in the stadia and buildings of others, and to charge and receive fees of admission to such games and contests.

133
1

(e) To borrow money and to execute all proper evidences of indebtedness and to secure the payment of same in any lawful manner.

(f) To lend money and be secured for the repayment of same in any lawful manner.

(g) To acquire, in any lawful manner, and to hold, own, sell and generally trade in and deal with stocks and bonds of other corporations.

(h) To receive and accept donations by gift or will.

(i) To sell, lease, convey and otherwise lawfully dispose of all or any of its property as its board of directors shall from time to time determine.

6. Petitioners desire however that the powers, especially enumerated herein, shall not be held to limit the general powers of the corporation, and petitioners desire for said corporation authority to exercise all of the powers usually incident to corporations of like nature, including the power to have and use a common seal, to make contracts, to sue and be sued in its corporate name, to make and adopt a constitution and all by-laws and regulations necessary or desirable for the successful accomplishment of the purposes of the corporation, and to establish, revoke and amend, at its pleasure, any and all lawful rules and regulations governing the qualification, conduct, admission, expulsion and suspension of its members.

7. Petitioners specify as one of the charter conditions

to which all membership in said corporation shall be subject, that upon the death, resignation or expulsion of any member, or the termination of his membership for any cause whatsoever, all his right and interest in said corporation shall cease, so that neither he nor his heirs, assigns or representatives shall have any interest in or claim upon any of the property of said corporation or its funds or income, whether previously or subsequently acquired, nor be entitled to demand or receive any dividend or distributive share thereof, whether declared or distributed during the existence of said association or upon its dissolution, provided that nothing herein contained shall impair the right of any person ceasing to be a member to hold or enforce against said association any bond or other debt incurred by the association upon or for a consideration other than that of membership therein.

8. That petitioners desire for said corporation power and authority to apply for and accept amendments to its charter, of either form or substance, and to wind up its affairs and surrender its charter at any time it may determine to do so by the vote of the majority of its then duly constituted directors.

WHEREFORE, petitioners pray that this petition be filed, published and recorded as required by law, and that they be incorporated under the name and style as aforesaid, and that said corporation have all the rights, powers, privileges and immunities hereinabove set forth or which are allowed to corporations of like nature by the laws of Georgia, and that all orders necessary or proper to these ends be entered;

and your petitioners will ever pray, etc.

Jones, Evins, Powers & Jones,
Attorneys for Petitioners.

Filed in office this the 8 day of March, 1934.

J. W. Simmons Clerk Superior Court, Fulton County, Georgia.

ORDER

GEORGIA,
FULTON COUNTY.

IN THE SUPERIOR COURT OF SAID COUNTY:

The Foregoing petition of M. L. Brittain, W. V. Skiles, J. B. Crenshaw, G. H. Boggs, Floyd Field, A. H. Armstrong, T. W. Noel, W. A. Alexander, L. W. Robert, Jr., R. T. Jones, Jr., George W. McCarty, Jr., Oscar Davis, I. L. Kuniansky, B. L. Mattingly, R. H. Tharpe and E. E. Laws coming on regularly to be heard, and having been read and considered, and it appearing that said petition was properly filed in the office of the Clerk of this Court and has been published as required by law, and that all provisions of law with respect to such matters have been duly complied with and that the objects of said petition come within the purview of the laws of Georgia.

IT IS ORDERED: That the prayers of said petition be, and the same is hereby granted, and that

e, and the same is hereby chartered as a corporation nder the laws of the State of Georgia, with perpetual uccession for a period of twenty (20) years and the ight of renewal at the expiration of said time by omplying with the laws of Georgia in such matters. Ordered further that said corporation have all the ights, powers and privileges prayed for in said petition, nd all other rights, powers and privileges which are llowed to corporations of a like nature by the laws f Georgia.

Let this judgment be filed and recorded in this Court and the same is hereby declared, along with certified copy of said petition, to be evidence of said ncorporation and said charter

In Open Court, this 14th day of April, 1934.

(signed) Virlyn B. Moore,
Judge, Superior Court,
Fulton County.

Defendant next introduced in evidence "Plaintiff's xhibit 3", being copy of the original application for harter and order thereon allowed the University of eorgia Athletic Association, as follows:

PLAINTIFF'S EXHIBIT 3

"In re:	)	No. 5387
	)	
University of Georgia	)	Clarke Superior Court
	)	
Athletic Association	)	Petition for Charter
	)	
CHARTER	)	Filed in office Jan. 7th, 1928 - E. J. Crawford, Clerk.

G E O R G I A,
CLARKE COUNTY.

TO THE SUPERIOR COURT OF SAID COUNTY:

The petition of Charles M. Snelling, A. M. Soule, S. V. Sanford, T. S. Mell, Blanton Fortson, A. C. Erwin, A. G. Dudley, E. H. Dorsey, H. H. Gordon, Jr., John Welch, Mike Costa, E. E. Lamkin, R. P. White, Hugh J. Rowe, M. P. McWhorter, H. J. Stegeman, W. D. Hooper, M. P. Jarnagin, W. O. Payne, of Clarke County, Georgia, Harold Hirsch, Marion Smith, E. W. Moise and Daniel MacDougald of Fulton County Georgia, and G. C. Woodruff, Frank Foley, and L. D. Hill, of Muscogee County, Georgia, respectfully showeth:

1. That your petitioners desire, for themselves and their associates, to become incorporated and be be made a body corporate and politic under the laws of Georgia under the name and style of

2. That said corporation will have no capital stock.

3. That the object of said corporation is not profit or pecuniary gain to its members, but is to promote the physical and moral welfare of the student body of the University of Georgia by encouraging participation in healthful exercise, recreation, athletic games and contests, and for that purpose to erect a stadium or stadia and other suitable buildings; to provide adequate equipment for its members participating in such exercise, games and contests; to arrange and hold athletic contests in its own stadium or buildings or in the stadia or buildings of others; and to charge fees of admission to such games and contests in order to defray the expenses of said corporation and to accomplish its purpose.

4. That the principal office and place of business of said corporation shall be in Clarke County, Georgia, but petitioners desire the right to establish branch offices within or without the State whenever a majority of the directors shall so determine.

5. That petitioners desire to become incorporated for the full period of twenty years with the privilege of renewal, when and as often as it may lawfully be done.

6. That petitioners desire authority for said corportation to sue and be sued; to plead and be impleaded; to contract and be contracted with; to have and use a common seal; to be invested with all the powers,

rights, franchises and privileges necessary or proper for the successful accomplishment of its objects, including all the powers generally provided by law for corporations; to adopt a constitution and to make such by-laws, rules and regulations as it may desire, and to establish, revoke and amend, at its pleasure, any and all lawful rules governing the qualification, conduct, admission, expulsion, and suspension of its members.

7. Petitioners specify as one of the charter conditions to which all membership in said corporation shall be subject, that upon the death, resignation or expulsion of any member, or the termination of his membership for any cause whatsoever, all his right and interest in said corporation shall cease, so that neither he nor his heirs, assigns or representatives shall have any interest in or claim upon any of the property of said corporation or its funds or income, whether previously or subsequently acquired, nor be entitled to demand or receive any dividend or distributive share thereof, whether declared or distributed during the existence of said association or upon its dissolution, provided that nothing herein contained shall impair the right of any person ceasing to be a member to hold or enforce against said association any bond or debt incurred by the association upon or for a consideration other than that of membership therein.

8. That petitioners desire for said corporation the power to purchase, rent, lease, receive, hold and own such real and personal property as may be necessary or appropriate for its purposes; the power to

issue such notes, bonds or other evidences of debt as it may desire and to secure the same by mortgage, deed or trust, or other appropriate instrument upon any realty, personalty or other property it may own; and the power to dispose of, sell and convey any or all of its said property at its pleasure.

9. That petitioners desire for said corporation authority to own stock in other corporations and to dispose of same at pleasure, subject to the limitations imposed by the Constitution of Georgia.

10. That petitioners desire for said corporation, in order to effectuate its purposes, the power to receive donations by gift or will.

11. That petitioners desire for said corporation the right to accept amendments to its charter, either in matters of form or of substance, by a majority vote of its directors, and the power, upon majority vote of its directors, to surrender its charter and wind up its affairs at any time that it may desire.

WHEREFORE, petitioners pray that this petition be filed, published and recorded as provided by law, and that an order be passed incorporating them as aforesaid, and your petitioners will ever pray, etc.

Harold Hirsch
Daniel MacDougald
Marion Smith
T. S. Mell
Attorneys for Petitioners.

GEORGIA, CLARKE COUNTY.

IN THE SUPERIOR COURT OF SAID COUNTY:

IN RE PETITION FOR CHARTER
UNIVERSITY OF GEORGIA
ATHLETIC ASSOCIATION.

In Open Court on this the 14th day of February, 1928, I hereby certify that I am disqualified to preside upon the petition for Charter of the University of Georgia Athletic Association, because I am a member of said Association.

This the fourteenth day of February 1928.

Blanton Fortson
Judge Superior Court, W. C.

Appointed to Judge Pro Hac Vice by Clerk.

Pursuant to the provisions of Code Section 4856 and 4858 - I, E. J. Crawford, Clerk of the Superior Court of Clarke County, do hereby select Henry C. Tuck, as Judge Pro Hac Vice, to preside over and act upon the petition for Charter of the University of Georgia Athletic Association.

In Open Court this the fourteenth day of February 1928.

E. J. Crawford
Clerk Superior Court,
Clarke County, Georgia.

"GEORGIA, CLARKE COUNTY.

EX PARTE) APPLICATION FOR
) INCORPORATION
) UNIVERSITY OF GEORGIA
) ATHLETIC ASSOCIATION
) CLARK SUPERIOR COURT.

The application of petitioners for incorporation having been filed and published as by law required, and all of the provisions of the statute having been complied with by petitioners, and the application being within the purview and intent of the law;

IT IS THEREUPON ORDERED, CONSIDERED AND ADJUDGED by the Court that petitioners be, and they are hereby incorporated under the name of

UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION

for the full period of twenty (20) years, with the right of renewal, and with all other rights, privileges and immunities as prayed for in the petition, and such others as are incident to like corporations.

Let these proceedings be recorded and this order entered upon the Minutes, and the petitioners will pay the costs thereof.

IN OPEN COURT, this the 14th day of February, 1928.

(sgd) Henry C. Tuck,
Judge Pro Hac Vice, Superior Court, Clarke County, Georgia."

Defendant next introduced in evidence "Defendant's Exhibit 4", being a check on the First National Bank of Atlanta, dated November 27, 1934, as follows:

DEFENDANT'S EXHIBIT 4

THE FIRST NATIONAL BANK
PEACHTREE OFFICE – NORTH AVE. NO. 1097
ATLANTA, GEORGIA, November 27, 1934.
Pay to the order of J. D. Osborne 604 Doctors Bldg.
Atlanta, Ga., ... $24.00
GEORGIA TECH ATHLETIC ASSOCIATION
FLOYD FIELD, Treasurer.
A. H. ARMSTRONG, Business Manager.

Endorsed and stamped paid 11–30–34.

* * * * * * * * *

Defendant next introduced in evidence "Defendant's Exhibits 5-A, 5-B and 5-C", being checks of Georgia Tech Athletic Association payable to the Collector of Internal Revenue.

DEFENDANT'S EXHIBIT 5-A

THE FIRST NATIONAL BANK
PEACHTREE OFFICE – No. 10251
ATLANTA, GEORGIA, December 8, 1932
Pay to the order of Collector of Internal Revenue
..... $5,848.80
GEORGIA TECH ATHLETIC ASSOCIATION
FLOYD FIELD, Treasurer
A. H. ARMSTRONG, Business Manager.

Endorsed and stamped paid 12–24–32

DEFENDANT'S EXHIBIT 5-B

THE FIRST NATIONAL BANK
PEACHTREE OFFICE – No. 10225
ATLANTA, GEORGIA, November 29, 1932
Pay to the order of Collector of Internal Revenue
..... $3,880.68
GEORGIA TECH ATHLETIC ASSOCIATION
FLOYD FIELD, Treasurer
A. H. ARMSTRONG, Business Manager.

Endorsed and stamped paid 12–2–32

DEFENDANT'S EXHIBIT 5-C

THE FIRST NATIONAL BANK
PEACHTREE OFFICE – No. 10186
ATLANTA, GEORGIA, November 14, 1932
Pay to the order of Collector of Internal Revenue
..... $1,230.69
GEORGIA TECH ATHLETIC ASSOCIATION
FLOYD FIELD, Treasurer
A. H. ARMSTRONG, Business Manager.

Endorsed and stamped paid 11–22–32.

Defendant next introduced in evidence "Defendant's Exhibits 6-A and 6-B", being specimens of football tickets of the University of Georgia Athletic Association used during the Fall of 1934, as follows:

DEFENDANT'S EXHIBIT 6-A

North Stand Hold Your Own Ticket
MEMORIAL STADIUM - COLUMBUS, GA.
Enter Gate....

GEORGIA vs. AUBURN.
Sec....

SAT. NOV. 24, 1934 at 2 P. M.
Row....

Established price $2.04 Total
Tax .21 $2.25 Seat -2-
(see back of ticket)

On reverse side of ticket is a diagram of field and the following:

*The University of Georgia being an Instrumentality of the Government of the State of Georgia, contends that it is not liable for any admission tax. The amount stated as a tax is so stated because the University is required to do so by Treasury Regulations pending a decision as to its liability in this respect. This amount is collected by the University as a part of the admission and will be retained as such unless it is finally determined that the University is itself liable for the tax.

* * * * * * * * * *

DEFENDANT'S EXHIBIT 6-B

ADMIT ONE
NO. 207 FOOTBALL GEORGIA vs. STETSON
SANFORD STADIUM, SEPT. 29, 1934, 3:30 P. M.
Est'd Price $1.36 Not good on Right Side of
Tax* .14 Aisles 6 and 27.

$1.50

*The University of Georgia, being an Instrumentality of the Government of the State of Georgia, contends that it is not liable for any admission tax. The amount stated as a tax is so stated because the University is required to do so by Treasury Regulations pending a decision as to its liability in this respect This amount is collected by the University as a part of the admission and will be retained as such unless it is finally determined that the University is itself liable for the tax.

Defendant next introduced in evidence "Defendant's Exhibit 7", being a list of the names and players on varsity football team at the University of Georgia during the Fall of 1934, as follows:

DEFENDANT'S EXHIBIT 7

"University of Georgia Football Squad
Year 1934

Green, Maurice	Eatonton, Ga.
Grant, Cy	Atlanta, Ga.
West, John H.	Dawson Springs, Ky.
McCullough, David Cordell	Atlanta, Ga.

Treadway, Chas.	Atlanta, Ga.
Harman, Harry E.	Atlanta, Ga.
Hall	
O'Farrell, Hugh R.	Athens, Ga.
Law, W.	Atlanta, Ga.
Griffith, Jack	Albany, Ga.
Hollis, Howell	Newnan, Ga.
Bond, John	Toccoa, Ga.
McKnight, John	Toccoa, Ga.
Shi, Allan D.	Macon, Ga.
Opper, Chas. G.	Savannah, Ga.
Gunnels, Sandy	Hull, Ga. Rt. No. 2
Ashford, Alec	Athens, Ga.
Jones, Johnny	Atlanta, Ga.
Wagnon, Henry S.	Bostwick, Ga.
Candler	
Turbyville, Chas.	Chattanooga, Tenn.
Law, B.	Atlanta, Ga.
Chapman, Geo. A.	Winder, Ga.
Anderson, Alf	Decatur, Ga.
Minor, Alfred W.	Collingswood, N. J.
Causey	
Earle	
Morgan	
Brown, John C.	Athens, Ga.
Perkinson	Atlanta, Ga.
O'Malley	Savannah, Ga.
Cavan	
Johnson, Glenn	Savannah, Ga.
Chapman, Buck	

"

Defendant introduced in evidence "Defendant's Exhibit 8", being a certified copy of the claim for re-

fund filed by Georgia Tech Athletic Association, to which is attached a letter dated October 11, 1933, from the Commissioner of Internal Revenue addressed to Georgia Tech Athletic Association, bearing the official stamp of the Commissioner's office with the action taken endorsed on the reverse side, which is incorporated elsewhere in the record as "Plaintiff's Exhibits 10 and 11", appearing on pages 320 and 324, except endorsements thereon in the Bureau of Internal Revenue, as follows:

DEFENDANT'S EXHIBIT 8

"CERTIFICATES

NO PREVIOUS CLAIM

I certify that an examination of the records of the Bureau of Internal Revenue shows the following facts as to the assessment and payment of the tax:

729 Schedule No.

Name of Taxpayer	Character of assessment and period covered	List.	Year.	Month.	Page.	Line.	Amount.	Date Paid.	District in which paid.
	Tax Admission								
Georgia Tech	Oct. 1932	ST	1932	Dec.	1500	4	$5,111.37	12-1-32	Georgia
Athletic	Nov. 1932	"	1932*	Dec.	1503	6	5,848.80	12-22-32	"
Association									
North Ave.,	Jan. 1933	"	1933	Mar.	1502	2	158.33	3-7-33	"
Atlanta, Ga.	Feb. 1933	"	1933	Mar.	1500	9	63.12	3-2-33	"
	TOTAL						$11,181.62		

W. E. Page,
Collector of Internal Revenue

*Period not given

.....
Assessment Clerk, Commissioner's Office.

I certify that the records of my office show the following facts as to the purchase of stamps:

JCE 7-26-36 Claim No. ST8963

Claim No. ST8963

To whom sold issued	Kind.	Number.	Denomination.	Date of sale or issue	If special tax stamp, state: Amount	Serial number.	Period commencing

ENTERED

REFUND B

.....
Collector..... District Georgia

Schedule Number ST-REJ 3234 Oct 30 1933 District Ga.....
Adm.
Allowed or Rejected Number..... (Nature of Tax)

Claimant Georgia Tech Athletic Assn.

Address Atlanta, Ga.

Examined and submitted for action....., 19.....

Schedule No.....
Claim examined by—
WJR
Claim approved by –
M. E. Hay
Acting Chief of Division

COMMITTEE ON CLAIMS
Amount Claimed – $11,181.62
WED Amount allowed – $.....
Amount re- $11,181.62
jected –

2-11704

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PAGE

Defendant next offered in evidence "Defendant's Exhibit 9", as follows:

DEFENDANT'S EXHIBIT 9

Treasury Department
Internal Revenue Service
Form approved by Comptroller General U. S.
October 31, 1931.

COMMISSIONER'S TELEGRAPHIC ASSESSMENT LIST

Treasury Department
Bureau of Internal Revenue
Washington
Miscellaneous Unit
Sales Tax Div. A. & C. Sec 3:30 P. M.
(unit, division and section, time written)
Charge: Treasury Department, Appropriation for Collecting Internal Revenue"

T E L E G R A M
OFFICIAL BUSINESS—GOVERNMENT RATES
October 22 1934
October 1934 2nd Supplemental
COLLECTOR OF INTERNAL REVENUE
ATLANTA GEORGIA

JOINT ASSESSMENTS ARE HEREBY MADE AND CERTIFIED TO YOU AS FOLLOWS

GEORGIA TECH ATHLETIC ASSOCIATION
GEORGIA TECH ATHLETIC ASSOCIATION IN-

CORPORATED BOARD OF CONTROL GEORGIA TECH ATHLETIC ASSOCIATION DOCTOR M L BRITTAIN DOCTOR W V SKILES DOCTOR J B CRENSHAW DOCTOR GILBERT BOGGS PROFESSOR FLOYD FIELD DOCTOR A H ARMSTRONG GEORGE W MCCARTY ROBERT T JONES JUNIOR JACK PHILILPS D KALKHURST W N GLENN ALL OF ATLANTA GEORGIA TAX ON ADMISSIONS THREE THOUSAND NINE HUNDRED FOURTEEN DOLLARS SIXTY THREE CENTS PERIOD SEPTEMBER AND OCTOBER NINETEEN HUNDRED THIRTY FOUR

CHARLES E MARTIN TRUSTEE UNIVERSITY OF GEORGIA ATHLETIC ASSOCIATION UNIVERSITY OF GEORGIA DEPARTMENT OF ATHLETICS ALL OF ATHENS GEORGIA TAX ON ADMISSIONS EIGHT HUNDRED NINETY FIVE DOLLARS THIRTY SEVEN CENTS PERIOD SEPTEMBER AND OCTOBER NINETEEN HUNDRED THIRTY FOUR

ISSUE NOTICE AND MAKE DEMAND FOR IMMEDIATE PAYMENT AND IF PAYMENT IS NOT MADE IMMEDIATELY FILE NOTICE OF LIEN

(sgd) GUY T HELVERING
Commissioner of Internal Revenue.

Defendant introduced in evidence "Defendant's Exhibit 10", being a copy of return for tax on admissions for October, 1932, filed by the Georgia Tech Athletic Association, as follows:

DEFENDANT'S EXHIBIT 10

"TAX ON ADMISSIONS, DUES, AND SAFE DEPOSIT BOXES

Oct. 1932 388068

Character of Tax	Amount of Tax
(a) Admissions to any place, if in excess of 40 cents	$4 895 77
(b) Free or reduced-rate admissions	215 60

* * *

(g) Club dues $1,230.69 was paid 11-21-32
(h) Club initiation fees Transferred from Unid. Acc't

* * *

Dec-1932 S T List 12-1-32.
Name Georgia Tech Athletic Association.
No. and Street
City and State Atlanta, Georgia

1500 4 2-14703

828

	Amount of Tax
Total liability	$5 111 37

* * *

Total amount due	5 111 37

I swear (or affirm) that the foregoing is a true return of the amount of tax due on admissions or dues for the month of....., 193 , and that the amount of the credit deducted is correct and allowable by law. Signed Floyd Field, Treas.

* * *

Sworn to and subscribed before me this 29th day of November 1932

Florence England (Name) or (Witness) (See paragraph 5 of instructions) Notary Public (Title) or (Witness)

Collector Int. Rev.
Received
(STAMPED) Nov 30 1932
Dist. of Georgia

Internal Revenue
Paid
(STAMPED) Dec 1 1932
Dist of Ga.
J. T. Rose, Collector

Defendant introduced in evidence "Defendant's Exhibit 11", being a copy of a return for tax on admissions for November, 1932, filed by the Georgia Tech Athletic Association, as follows:

DEFENDANT'S EXHIBIT 11

"TAX ON ADMISSIONS, DUES, AND SAFE DEPOSIT BOXES
L-584880

Character of Tax	Amount of Tax
(a) Admission to any place, if in excess of 40 cents	$5 848 80

* * *

Name Georgia Tech Athletic Association
No. and Street
City and State Atlanta, Georgia.

1503 6 2-14703

* * *

Nov - 1932	Amount of Tax
Total liability	$5 848 80

* * *

Net tax due 5 848 80

* * *

Total amount due 5 848 80

I swear (or affirm) that the foregoing is a true return of the tax due on admissions or dues for the month of November 1932 and that the amount of the credit deducted is correct and allowable by law.

Signed Floyd Field, Treas.

* * *

Sworn to and subscribed before me this 21st day of December 1932

E. E. Allen, Notary Public "

Rec'd with remittance
Dec
21
(STAMPED) 1935
Coll. Int. Rev. Dist. of

Internal Revenue
PAID
(STAMPED) Dec 23 1932
Dist. of Ga.
J. T. Rose, Collector "

Defendant introduced n evidence "Defendant's Exhibits 12, 13 and 14, being copies of returns prepared by the Collector of Internal Revenue, as follows:

DEFENDANT'S EXHIBITS 12, 13 and 14

Ex. 12

TAX ON ADMISSIONS, DUES, AND SAFE DEPOSIT BOXES

Character of Tax — Amount of Tax

(a) Admission to any place, if in excess of 40 cents ..... $ 159 88

* * *

Name Charles E. Martin, Trustee
University of Georgia Athletic Assn., Department of Athletics, University of Georgia.

No. and Street

City and State Athens, Georgia

2-14703

* * *

Amount of Tax

Total liability ..... $ 159 88

* * *

Total amount due 159 88

I swear (or affirm) that the foregoing is a true return of the amount of tax due on admissions or dues for the month of September 1934, and that the amount of credit deducted is correct and allowable by law.

This return prepared under the provisions of Sec. 3176 R. S.

Signed Paul Cobb Dep. Col

* * *

Sworn to and subscribed before me this 19th day of October 1934

Ruth S. Mooney (Name) or (Witness) (See paragraph 5 of instructions) Dep. Col. (Title) or (Witness)

* * *

EX. 13

TAX ON ADMISSIONS, DUES, AND SAFE DEPOSIT BOXES

Character of Tax — Amount of Tax

(a) Admission to any place, if in excess of 40 cents ..... $ 735 49

* * *

Name Charles E. Martin, Trustee
University of Georgia Athletic Assn., Department of Athletics, University of Georgia.

No. and Street

City and State Athens, Georgia

2-14703

* * *

	Amount of Tax
Total liability	$ 735 49

* * *

Total amount due	735 49

I swear (or affirm) that the foregoing is a true return of the amount of tax due on admissions or dues for the month of October 1934, and that the amount of credit deducted is correct and allowable by law. This return prepared under the provisions of Sec. 3176 R. S.

Signed Paul Cobb Dep. Col

* * *

Sworn to and subscribed before me this 19th day of October 1934

Ruth S. Mooney (Name) or (Witness) (See paragraph 5 of instructions) Dep. Col. (Title) or (Witness)

* * *

Ex. 14

TAX ON ADMISSIONS, DUES, AND SAFE DEPOSIT BOXES

Character of Tax	Amount of Tax
(a) Admissions to any place, if in excess of 40 cents	$3 914 63

* * *

Name Georgia Tech Athletic Association

No and Street

City and State Atlanta, Ga.

2-14703

* * *

Oct 1934 List Pg 500 L O

	Amount of Tax
Total liability	$3 914 63

* * *

Total amount due	3 914 63

I swear (or affirm) that the foregoing is a true return of the amount of tax due on admissions or dues for the month of Sept - Oct 1934, and that the amount of the credit deducted is correct and allowable by law.

Signed T. A. Wallace (s) Deputy Collector

(State whether individual owner of business member of firm, or if officer of corporation or duly authorized manager or agent, give title)

Sworn to and subscribed before me this 19 day of Oct, 1934

Sarah Fambro (s) Deputy Collector (Name) or (Witness) (See paragraph 5 of instructions) (Title) or (Witness)

* * * "

Thereupon, the following colloquy took place:

MR. EUSTACE: May it be further stipulated that after the assessment made by the Commissioner of Internal Revenue, as shown by "Defendant's Exhibit 9", with demand for payment of the tax, that the demand was made by the Collector of the University of Georgia Athletic Association and also Georgia Tech Athletic Association for the respective amounts?

MR. SMITH: We sipulate that. W do note stipulate that it was a tax. We stipulate that demand was made with assessment for whatever it was.

MR. EUSTACE: May it further be stipulated that upon failure to pay the amount claimed by the Collector as tax on each of these items the Collector of Internal Revenue filed liens with the Clerk of the District Court of the United States for the Northern District of Georgia, and also with the Clerks of the Superior Courts of the respective Counties, in which the institutions are located?

MR. SMITH: We will stipulate that.

MR. EUSTACE: May it be further stipulated that the Collector issued his warrants of distraint, which were placed in the hands of deputy collectors for service, and that levies under these warrants were made upon bank accounts in the banks carrying the deposit of funds, which were separately set aside by the officers of these Athletic Associations as being the amounts collected representing 10% of the amounts of the admissions?

MR. SMITH: We will stipulate that.

MR. EUSTACE: May it be further stipulated that demand and notice of levy and demand for payment was made upon each of these banks, and that levies were made upon the bank deposits represented by these funds?

MR. SMITH: We so stipulate.

Defendant then introduced in evidence "Defendant's Exhibit 15", being notice of tax lien, as follows:

DEFENDANT'S EXHIBIT 15

NOTICE OF TAX LIEN UNDER INTERNAL REVENUE LAWS

Form 668–Revised Oct. 1928
Treasury Department
Internal Revenue Service
No. M. T. 481 United States Internal Revenue,
.....District of GEORGIA
Atlanta, Georgia October 24, 1934

Pursuant to the provisions of Section 3186 of the Revised Statutes of the United States, as amended by Section 613 of the Revenue Avt of 1928 (Act of May 29, 1928, 45 Stat., 875) notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayers, taxes (including penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statute the amount of said taxes, together with interest penalties and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of Taxpayer Charles E. Martin, Trustee; Univ. of Ga. Athletic Assn.; and Univ. of Ga. Department of Athletics
Residence or place of business Athens, Georgia
Nature of tax Tax on Admissions
Taxable period September & October, 1934

Amount of tax assessed $895.37
Additional (penalty) tax assessed
Date assessment list received October 24, 1934
(signed) W. E. Page Collector.

(Verification Omitted)

TO Clerk, Superior Court
Clarke County
Athens, Georgia

(on reverse side of notice)

Section 3186, R. S., as amended by Section 613, Revenue Act of 1928 and Section 509, Revenue Act of 1934. "(a) If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto), shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

"(b) Such lien shall not be valid as against any mortgagee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

"(1) in accordance with the law of the State or Territory in which the property subject to the lien is situated whenever the State or Territory has by law provided for the filing of such notice; or

"(2) in the office of the clerk of the United States District Court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or

"(3) in the office of the clerk of the Supreme Court of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"(c) Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—

"(1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable;

"(2) May issue a certificate of release of the lien if there is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with the requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations;

"(3) May issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remain-

ing subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

"(4) May issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States."

"(d) A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

"(e) The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulation provide for the acceptance of a single bond complying both with the requirements of section 272(*j*) of the Revenue Act of 1928 (relating to the extension of time for the payment of a deficiency), or of any similar provisions of any prior law, and the requirements of subsection (*c*) of this section.

"(f) Subsections (*c*), (*d*), and (*e*) of this section shall apply to a lien in respect of any internal-revenue tax, whether or not the lien is imposed by this section."

Defendant next introduced in evidence "Defendant's Exhibit 16", being a copy of warrant for distraint, as follows:

DEFENDANT'S EXHIBIT 16

"WARRANT FOR DISTRAINT

Special Miscellaneous
No. 1133

Balance Forward	Date	Charge	Last Unpaid Credit	Account Balance	Number and remarks
		$895.37		895.37	Oct. 1934 - 2nd Supplemental O - O Tax on Admissions Sept. and Oct. 1934.

Charles E. Martin, Trustee,
University of Georgia Athletic Association
University of Georgia Department of Athletics
Athens, Ga.

To Paul Cobb, Deputy Collector.

WHEREAS, in pursuance of the provisions of the Acts of Congress relating to internal revenue the above-named person or persons is or are liable to pay the tax or taxes assessed against him, or them, in the amount or amounts named hereinbelow, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; AND WHEREAS, ten days have elapsed since notice was served and demand made upon said person or persons for payment of said tax or taxes; AND WHEREAS, said person or persons still neglects or refuse to pay the same: You

are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property, including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or of which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement below, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purpose aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixteenth day after the execution hereof.

Unpaid balance $895.37

* * *

Total tax, penalty, and interest due on date of second notice $895.37

* * *

Witness my hand and official seal at Atlanta, Ga. this 24th day of October, 1934

(signed) W. E. Page
Collector of Internal Revenue.
Internal Revenue Collection District of Georgia

RETURN OF DEPUTY COLLECTOR

*I hereby certify that, pursuant to the herein warrant of distraint, I proceeded to levy upon and sell the property herein described in order to satisfy the taxes, penalties, and interest herein stated and required by law, and that all provisions of law were strictly complied with; that the property was sold at public acution, after due notice, to the highest bidder at the prices herein stated:

1. Date of receipt of warrant October 24, 1934

2. Description of property levied upon Bank deposit in Citizens & Southern National Bank, Athens, Georgia in name of Charles E. Martin, Trustee.

*I have not executed the within warrant for the following reasons: Form 668-2 served on R. V. Watterson Vice Pres. & Cashier, C. & S. Nat'l Bank., Athens Ga., at 10:45 a. m. E. T. 10/25/34; Form 668-c served on R. V. Watterson personally & as V-P & Cashier, C. & S. Natl'l. Bk., Athens, Ga. at 5:00 p. m. E. T., 10/30/34. Payment not received; Warrant returned for suit.

Dated at Atlanta, Ga. November 5, 1934

(signed) Paul Cobb,
Deputy Collector

Defendant next introduced in evidence "Defendant's Exhibit 17", being notice of levy, as follows:

DEFENDANT'S EXHIBIT 17

NOTICE OF LEVY

United States of America
..... Collection District,
State of Georgia

To Citizens & Southern National Bank
(Name of person holding property, moneys, etc., belonging to taxpayer)
At Athens, Georgia

You are hereby notified that there is now due, owing, and unpaid from Charles E. Martin, Trustee, Athens, Ga. (Insert name of taxpayer) to the United States of America the sum of Eight Hundred Ninety Five and 37/100 dollars ($895.37) (Insert amount of tax, penalties and interest due) as and for an internal revenue tax.

You are further notified that all property, rights to property, moneys, credits, and/or bank deposits now in your possession and belonging to the aforesaid Charles E. Martin, Trustee (Insert name of taxpayer) and all sums of money owing from you to the said Charles E. Martin, Trustee (Insert name of taxpayer) are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the sum of Eight Hundred Ninety Five & 37/100 ($895.37) (Insert amount of tax, penalties, and interest) of the amount now owing from you to the said Charles E. Martin, Trustee (Insert name of taxpayer) or for such lesser sum as you may be indebted to him, to be applied in payment of the said tax liability.

Dated at Atlanta, Georgia this 24th day of October, 1934.

(signed) W. E. Page
Collector of Internal Revenue.

Service of the within notice acknowledged, this Oct. 25th, 1934.

CITIZENS & SOUTHERN NATIONAL BANK, ATHENS, GA.

By (signed) R. V. WATTERSON
Vice-President & Cashier.

Atlanta, Georgia
October 25, 1934

I, Paul Cobb, Deputy Collector, hereby certify that the within Notice of Levy was served upon R. V. Watterson, Vice-President and Cashier of the Athens Office of the Citizens & Southern National Bank, at the Banking Office of the Citizens & Southern National Bank, at Athens, Georgia, at 10:45 a. m. E. T. on October 25, 1934. The Bank's records show a balance of $1,119.71 on deposit subject to the Levy.

(signed) Paul Cobb,
Deputy Collector.

Defendant next introduced in evidence "Defendant's Exhibit 18", being notice and demand for tax, as follows:

DEFENDANT'S EXHIBIT 18

NOTICE AND DEMAND FOR TAX
SPECIAL MISCELLANEOUS

Form 17 (Rev. Aug. 1925 ORIGINAL
Treasury Department
Internal Revenue Service

Notice is hereby given that there has been assessed against you the amount of tax, penalty, and interest stated hereon. Demand is hereby made for immediate payment thereof. If payment is not made after date of this notice, the law provides that a penalty of 5 percent of the amount of the assessment will be added, plus additional interest on such assessment at the rate of 1 percent per month until paid.

Date 10-24-34

To avoid further penalty and interest the amount stated on this notice must be paid to Collector of Internal Revenue at Atlanta Ga.

Name and address—Charles E. Martin, Trustee,
University of Georgia Athletic Association.
University of Georgia Department of Athletics,
Athens, Ga.
Oct. 1934 - Second Supplemental - O - O

Items—$895.37

Paid—

Assessment—$895.37

Description—Tax on Admissions September & October 1934 0-5

Return this Form with Remittance 2-13640

Defendant next introduced in evidence "Defendant's Exhibit 19", being second notice and demand for tax, as follows:

DEFENDANT'S EXHIBIT 19

SECOND NOTICE AND DEMAND FOR TAX
SPECIAL MISCELLANEOUS TAX

Date 10-24-34

Demand is hereby made for the payment of the amount stated on this notice. Due to your failure to pay within the prescribed time, a penalty of 5% plus additional interest at the rate of 1% per month beginning on the due date stated below is also demanded. If payment of the tax, penalty and interest is not received within ten days after the above date, collection with costs shall be made by seizure and sale of property.

Due Date 10-24-34

W. E. Page
Collector of Internal Revenue

To avoid seizure and sale of property this tax must be paid within ten days after the date of this notice to the Collector of Internal Revenue at Atlanta, Ga.

To the Collector of Internal Revenue:

I enclose remittance covering tax, penalties, and interest itemized below:

Tax $895.37

* * *

Name .....

Total $895.37

Name and Address—Charles E. Martin, Trustee
University of Georgia Athletic Association,
University of Georgia Department of Athletics,
Athens, Ga.
Oct. 1934 - 2nd Supplemental - O - O

Items—

Amount Due—$895.37

Period Covered—

Reason for Assessment—Tax on Admission September & October 1934

Return this Form with Remittance

Defendant next introduced in evidence "Defendant's Exhibit 20", being notice of tax lien, as follows:

DEFENDANT'S EXHIBIT 20

NOTICE OF TAX LIEN UNDER INTERNAL REVENUE LAWS

Form 668–Revised Oct. 1928
Treasury Department
Internal Revenue Service

No. M. T. 480

United States Internal Revenue,
..... District of Georgia,
Atlanta, Ga., October 24, 1936

Pursuant to the provisions of Section 3186 of the Revised Statutes of the United States, as amended by Section 613 of the Revenue Act of 1928 (Act of May 29, 1928, 45 Stat. 875), notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following named taxpayer, taxes (including penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statute the amount of said taxes, together with interest, penalties and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit: Board of Control, Ga. Tech Athletic Assn., Ga. Tech Athletic Assn., Ga. Tech Athletic Assn,. Inc., Dr. M. L. Brittain, Dr. W. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Prof. Floyd Field, Dr. A. H. Armstrong, Geo. W. Mc-

Robert T. Jones, Jr., Jack Phillips, D. Kalk-
and W. H. Glenn.

of Tax—Tax on Admissions

e Period—September & October, 1934

t of tax assessed—$3,914.63

onal (penalty) tax assessed—

ssessment list received—October 24, 1934

(signed) W. E. Page,
Collector

cation Omitted)

lerk, U. S. District Court
Athens, Georgia 2-1036

ndant next introduced in evidence "Defendant's
t 21", being a copy of warrant for distraint,
ows:

DEFENDANT'S EXHIBIT 21

WARRANT FOR DISTRAINT
Special Miscellaneous No. 1134

Form 69
Treasury Department
Internal Revenue Service
Revised March, 1933
Date—

Charge—$3,914.63

Unpaid Balance—$3,914.63

Account Number and Remarks—(Oct. 1934 - 2nd Sup 0-1)Tax on Admissions, September & October, 1934

Date of First Notice—10-24-34

Date of Second Notice—

Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Association, Doctor M. L. Brittain, Doctor W. V. Skiles, Doctor J. B. Crenshaw, Doctor Gilbert Boggs, Professor Floyd Field, Doctor A. H. Armstrong, George W. McCarty, Robert T. Jones, Jr. Jack Phillips, D. Kalkhurst, W. H. Glenn,
Atlanta, Georgia.

To W. J. Boswell, Deputy Collector.

WHEREAS, in pursuance of the provisions of the Acts of Congress relating to internal revenue the above named person or persons is or are liable to pay the tax or taxes assessed against him, or them, in the amount or amounts, named hereinbelow, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; AND WHEREAS, ten days have elapsed since notice was served and demand made upon said person or or persons for payment of said tax or taxes; AND WHEREAS, said person or persons still neglect or refuse to pay the same: You are hereby commanded to levy upon, by distraint, and to sell so much of the goods, chattles, effects, or other property or rights to property, including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes, as may be necessary to satisfy the tax or taxes, with such additional amounts, including interest, as are shown in the statement below, and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods, chattles, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof.

Unpaid balance..... $3,914.63
* * *

Total tax, penalty ,and interest due on date of second notice..... $3,914.63
* * *

Witness my hand and official seal at Atlanta, Ga. this 24th day of October, 1934.

(signed) W. E. Page
Collector of Internal Revenue.

Internal Revenue Collection District of Georgia

RETURN OF DEPUTY COLLECTOR

*I hereby certify that, pursuant to the herein warrant of distraint, I proceeded to levy upon and sell the property herein described in order to satisfy the taxes, penalties, and interest herein stated and required by law, and that all the provisions of law were strictly complied with; that the property was sold at public auction, after due notice, to the highest bidder at the prices herein stated:

1. Date of receipt of warrant 10/25/34
* * *

3. Description of property levied upon Bank deposit in name of Ga. Tech Athletic Assn. 1934-1935 Tax Account, at North Ave. Branch of First Nat'l Bank of Atlanta.
* * *

*I have not executed the within warrant for the following reasons: Form 668-2 served on R. A. Huie Asst. Cashier & Branch Mgr. First Nat'l Bank at 1:45 p. m. 10/25/34; Form 668-c served on R. A. Huie personally and as Asst. Cashier & Branch Mgr. First Nat'l Bank at 9:15 a. m. 10/31/34. Payment has not been received; Warrant returned for suit.

Dated at Atlanta, Ga. November 5, 1934

(signed) W. J. Boswell
Deputy Collector.

Defendant next introduced in evidence "Defendant's Exhibit 22", being copy of notice of levy, as follows:

DEFENDANT'S EXHIBIT 22

NOTICE OF LEVY ON BANK DEPOSITS

Form 668-A
Treasury Department
Internal Revenue Service
Dec. 1922

United States of America
.....Collection District,
State of Georgia

To First National Bank (Name of person holding property, moneys, etc., belonging to taxpayer)
At Atlanta, Georgia

You are hereby notified that there is due, and owing, and unpaid from Georgia Tech Athletic Assn. 1934-1935 Tax Account (Insert name of taxpayer) to the United States of America the sum of Three Thousand Nine Hundred Fourteen & 63/100 (Insert amount of tax, penalties, and interest due) dollars ($3,914.63) as and for an internal revenue tax.

You are further notified that all property and rights to property now in your possession and belonging to the aforesaid Ga. Tech Athletic Assn. 1934-1935 Tax Account (Insert name of taxpayer) and all sums of of money owing from you to the said Ga. Tech Athletic Assn. 1934-1935 Tax Account (Insert name of taxpayer) are hereby seized and levied upon for the payment of the aforesaid tax, together with penalties and interest, and demand is hereby made upon you for the sum of Three Thousand Nine Hundred Fourteen & 63/100 (Insert amount of tax, penalties, and interest) dollars ($3,914.63) of the amount now owing from you to the said Ga. Tech Athletic Assn. 1934-1935 Tax Acct. or such lesser sum as you may be indebted to (Insert name of taxpayer) him, to be applied in payment of said tax liability.

Dated at Atlanta, Georgia this 25th day of October, 1934.

(signed) W. E. Page,
Collector of Internal Revenue

10/25/34 Service Acknowledged
1:45 p. m. First National Bank of Atlanta
Peachtree & North Ave. Br.

By (signed) R. A. Huie,
Asst. Cashier & Br. Mgr.

Atlanta, Georgia
October 25, 1934

I, W. J. Boswell, Deputy Collector, hereby certify that the within Notice of Levy was served on R. A. Huie, Assistant Cashier and Branch Manager of the Peachtree & North Avenue Branch of the First National Bank of Atlanta, at the Banking Office of the First National Bank of Atlanta, Atlanta, Georgia, at 1:45 p. m., on October 25, 1934. Mr. Huie advised me that the Georgia Tech Athletic Assn. had funds on deposit in excess of the amount of this Levy.

(signed) W. J. Boswell,
Deputy Collector.

Defendant next introduced in evidence "Defendant's Exhibit 23", being notice and demand for tax, as follows:

DEFENDANT'S EXHIBIT 23

NOTICE AND DEMAND FOR TAX
SPECIAL MISCELLANEOUS

Form 17 (Rev. Aug. 1925)
Treasury Department
Internal Revenue Service

ORIGINAL

Notice is hereby given that there has been assessed against you the amount of tax, penalty, and interest stated hereon. Demand is hereby made for immediate payment thereof. If payment is not made date of this notice, the law provides that a penalty of 5 percent of the amount of the assessment will be added, plus additional interest on such assessment at the rate of 1 percent per month until paid.

Date 10-24-34

To avoid further penalty and interest the amount stated on this notice must be paid to Collector of Internal Revenue at Atlanta, Ga.

To the Collector of Internal Revenue

I enclose herewith remittance covering tax, penalties, and interest itemized below:

* * *

Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Association, Doctor M. L. Brittain, Doctor W. V. Skiles, Doctor J. B. Crenshaw, Doctor Gilbert Boggs, Professor Floyd Field, Doctor A. H. Armstrong, George W. McCarty, Robert T. Jones, Jr., Jack Phillips, D. Kalkhurst, W. H. Glenn,
Atlanta, Georgia.

Items—$3,914.63

Assessment—$3,914.63

Description—Tax on Admissions September & October, 1934

Defendant next introduced in evidence "Defendant's Exhibit 24", being second notice and demand for tax, as follows:

DEFENDANT'S EXHIBIT 24

SECOND NOTICE AND DEMAND FOR TAX
SPECIAL MISCELLANEOUS

Treasury Department
Internal Revenue Service
Form 21—Revised Aug. 1925 Date 10-24-34

Demand is hereby made for the payment of the amount stated on this notice. Due to your failure to pay within the prescribed time, a penalty of 5%, plus additional interest at the rate of 1% per month beginning on the due date stated below is also demanded. If payment of the tax, penalty and interest is not received within 10 days after the above date, collection with costs shall be made by seizure and sale of property.

Due date 10-24-34

W. E. Page,
Collector of Internal Revenue.

To avoid seizure and sale of property this tax must be paid within 10 days after the date of this notice to the Collector of Internal Revenue at Atlanta, Ga.

To the Collector of Internal Revenue:

I inclose remittance covering tax, penalties, and interest itemized below:

Tax	$3,914.63
Total	$3,914.63
Under Sec. 3184 R. S.) 5% Penalty on amount assessed) 1% Interest	
Total Due	$3,914.63

* * *

Name and Address—
Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Association, Doctor M. L. Brittain, Doctor W. V. Skiles, Doctor J. B. Crenshaw, Doctor Gilbert Boggs, Professor Floyd Field, Doctor A. H. Armstrong, Goegre W. McCarty, Robert T. Jones, Jr. Jack Phillips, D. Kalkhurst, W. H. Glenn,
Atlanta, Georgia.

Amount Due—$3,914.63

Reason for Assessment—Tax on Admissions Septmeber & October 1934.

Defendant next introduced in evidence "Defendant's Exhibit 25", being record of the Citizens and Southern National Bank of Athens, Georgia, of the account standing in the name of Charles E. Martin, Trustee, showing deposit and withdrawals of funds to that account, as follows:

DEFENDANT'S EXHIBIT 25

Card No. 4740

Chas. E. Martin, Trustee
City
U of Ga

In Account with THE CITIZENS & SOUTHERN BANK, Athens, Ga.

DATE	WITHDRAWN	DEPOSITED	BALANCE
	Balance brought forward		
MAY 8 1934		5203.51	5203.51
JUN 30 1934		13.01	5216.52
SEP 18 1934		17.08	5233.60
SEP 20 1934		16.30	5249.90
SEP 24 1934		9.46	5259.36
	65		
SEP 26 1934		11.44	5270.76
OCT 1 1934		11.44	5282.29
OCT 3 1934		64.40	5346.60
OCT 5 1934		85.82	5432.42
OCT 5 1934	11 52	37.13	5469.55
OCT 8 1934		16.37	5485.92
OCT 10 1934		19.81	5505.73
OCT 12 1934		28.06	5533.79
OCT 15 1934		20.14	5553.93
OCT 16 1934		30.02	5583.95
OCT 17 1934		125.72	5709.67
OCT 17 1934		22.43	5732.10

OCT 17 1934		113.90	5846.00
OCT 18 1934		16.81	5862.81
OCT 18 1934		405.90	6268.71
OCT 23 1934		51.03	6319.74
OCT 24 1934		16.49	6336.23
OCT 25 1934		11.50	6347.73
OCT 26 1934		44.11	6391.84
OCT 28 1934		13.26	6405.10
OCT 29 1934		19.13	6424.23
OCT 31 1934		10.43	6434.66
NOV 1 1934		18.71	6453.37
NOV 2 1934		15.56	6468.93

NOV 5 1934		32.61	6501.54

Defendant next introduced in evidence "Defendant's Exhibit 26", being bank record of the account of Georgia Tech Athletic Association in the First National Bank of Atlanta, as follows:

DEFENDANT'S EXHIBIT 26

Name Acct. No. 18722
GEORGIA TECH ATHLETIC ASSOCIATION
Address
1934-5 Tax Acct

In acc't with the Savings Dept. of the FIRST NATIONAL BANK of Atlanta, Ga.

DATE	WITHDRAWALS	DEPOSITS	BALANCE
OCT 25 '34		3,914.63	3,914.63

NOV 28 '34	3,823.67	7,738.30
	19.42	7,757.72
JAN 15 '35	55.85	7,813.57
JAN 18 '35	15.38	7,829.95
JAN 31 '35	14.17	7,843.12
FEB 5 '35	42.03	7,885.15
FEB 28 '35	10.54	7,895.69
APR 30 '35	73.80	7,969.49
MAY 31 '35	25.90	7,995.39
	78.91	8,074.30
	60.55	8,134.85
	61.00	8,195.85

18722

GEORGIA TECH ATHLETIC ASSOCIATION
Tax Acct

The undersigned agrees to the Rules and Regulations of THE FIRST NATIONAL BANK OF ATLANTA, Atlanta, Ga. with reference to Savings Accounts as set out in the Passbooks issued for Savings Accounts and as set out on reverse side of this Signature Card.

	Signature for Withdrawals
1. Georgia Tech Athletic Association	
2. A. H. Armstrong, Bus. Man. Floyd Field, Treas.	Both

ON REVERSE SIDE OF CARD

To The First National Bank of Atlanta, Atlanta, Ga.:

All moneys now on deposit, or at any time deposited by us, or either of us, with The First National Bank of Atlanta, Atlanta, Ga. to the credit of the above account, are and shall be deposited by us and received by said Bank, upon the following terms and conditions of repayment, viz:

That the amount thereof and all interest thereon, shall be paid by The First National Bank of Atlanta, Atlanta, Ga. to us or either of us, or to the survivor of us, or to the executors, administrators or assigns of such survivor, or upon the written order of any person so entitled to payment; and without reference to the original ownership of the moneys deposited.

Each of the undersigned appoints the other his attorney with power to deposit in this account monies of the other and for that purpose to endorse and check, draft, note or other instrument payable to the other or to said joint depositers.

Defendant next introduced in evidence "Defendant's Exhibit 27", being the bank record of the Georgia Tech Athletic Association tax account in the First National Bank of Atlanta, as follows:

DEFENDANT'S EXHIBIT 27

Name Name — Account No. 16853
Ga. Tech Athletic Asso.
Address Tax Account

In acc't with the Savings Dept. of the FIRST NATIONAL BANK of Atlanta, Ga.

DATE	WITHDRAWALS	DEPOSITS	BALANCE
OCT 31 '33		2,699.41	2,699.41
NOV 18 '33		3,829.26	6,528.67
		23.06	6,551.73
DEC 30 '33		9,050.46	15,602.19
		201.27	15,803.46
		170.53	15,973.99
		121.00	16,254.72
		121.90	16,376.62

16853 1 Ga Tech Athletic Asso.
2 Tax Account

The undersigned agrees to the Rules and Regulations of THE FIRST NATIONAL BANK OF ATLANTA, Atlanta, Ga. with reference to Savings Accounts as set out in the Passbooks issued for Savings Accounts and as set out on reverse side of this Signature Card.

Signatures
1. FLOYD FIELD, Treas. For
2. A. H. ARMSTRONG, Bus. Man. Withdrawlas

Both Signatures Required Both

ON REVERSE SIDE OF CARD

To The First National Bank of Atlanta, Atlanta, Ga.:

All moneys now on deposit, or at any time deposited by us, or either of us, with The First National Bank of Atlanta, Atlanta, Ga. to the credit of the above ac-

count, are and shall be so deposited by us and received by said Bank, upon the following terms and conditions of repayment, viz:

That the amount thereof and all interest thereon, shall be paid by The First National Bank of Atlanta, Atlanta, Ga. to us or either of us, or to the survivor of us, or to the executors, administrators or assigns of such survivor, or upon the written order of any person so entitled to payment; and without reference to the original ownership of the moneys deposited.

In the case of the death of either or both of us, further repayment shall at the option of The First National Bank of Atlanta, Atlanta, Ga. be conditioned upon the production of evidence that all the inheritance and estate taxes—if any be due—have been paid and that all other provisions of Law in such cases provided have been fulfilled.

Defendant next introduced in evidence "Defendant's Exhibits 28, 29, and 30", being forms of checks, as follows:

DEFENDANT'S EXHIBIT 28

ATHLETIC ASSOCIATION
REQ. No. 1063
UNIVERSITY OF GEORGIA
ATHENS, GA. Sept. 1, 1934
Pay to the order of Fred Hamilton $4.92
Four & 92/100 DOLLARS.
For Fgt. CHAS. E. MARTIN, Agent.

To NATIONAL BANK OF ATHENS,
64-66 ATHENS, GA.
6

Endorsed and stamped paid 9-5-34.

DEFENDANT'S EXHIBIT 29

Req. No. 2324 ATHLETIC ASSOCIATION, No. 443
UNIVERSITY OF GEORGIA,
ATHENS, GA.
ATLANTA, GA., Sept. 4, 1934.
Pay to the order of Western Union Tel. Co. $7.50
Seven & 50/100 Dollars.
To TRUST COMPANY OF GEORGIA,
64-10 ATLANTA, GA.
ATHLETIC ASSOCIATION,
UNIVERSITY OF GEORGIA,
CHAS E. MARTIN,
Secretary-Treasurer.

Endorsed and stamped paid 9-5-34.

DEFENDANT'S EXHIBIT 30

Req. No..... No. 628
DEPARTMENT OF ATHLETICS
UNIVERSITY OF GEORGIA, ATHENS, GA.
ATLANTA, GA. Oct. 31, 1934
Pay to the order of SEABOARD RAILROAD $474.10
B'Ham DEPARTMENT OF ATHLETICS,
UNIVERSITY OF GEORGIA,

383
387

To TRUST COMPANY OF GEORGIA
64-10 ATLANTA, GA.

CHAS. E. MARTIN,
Secretary-Treasurer.

Endorsed and stamped paid 11-2-34.

Thereupon defendant rested its case.

Thereupon, defendant, at the close of all of the evidence, and after both sides had rested, filed his written Motion to Dismiss the Bill of Complaint on each ground therein stated, and the same was filed and made a part of the record.

Thereupon, defendant filed its written request for Special Findings of Fact and Conclusions of Law, and the same was filed and made a part of the record.

On behalf of complainant, counsel submitted a form of order on the Motion to Dismiss filed by the defendant, which was signed by the Court and filed.

Thereupon, complainant submitted requests for Findings of Law and Fact, which was filed and made a part of the record.

After argument by counsel for the respective parties the Court requested respective counsel to submit briefs within a reasonable length of time. Thereupon the Court took the case under advisement.

The above and foregoing is all of the evidence introduced in the trial of said cause, and all proceedings had in the trial thereof.

WHEREFORE, defendant and appellant prays that the above statement of evidence be settled, approved, and allowed, by the above entitled Court as a true, full, and correct and complete statement of all the evidence, oral and documentary, taken and given on the trial of said cause for use on the appeal taken to the United States Circuit Court of Appeals for the Fifth Circuit.

Dated 3rd day of April, 1937.

LAWRENCE S. CAMP,
United States Attorney.

M. NEIL ANDREWS,
Assistant United States Attorney.

Solicitors for Defendant.

Service of the foregoing statement of evidence and receipt of copy thereof is hereby admitted and acknowledged this 3rd day of April, 1937.

M. J. YEOMANS,
Atty. Genl. State of Ga.

HAROLD HIRSCH,
MARION SMITH,
M. E. KILPATRICK,
Solicitors for Complainant.

Lodged in Clerk's office
under Equity Rule 75
April 3rd, 1937.

TITLE OMITTED.

ORDER APPROVING STATEMENT OF EVIDENCE

The foregoing statement of evidence is hereby allowed and approved, Appellee, through its counsel, having agreed that same is full and complete, and it so appearing to the Court, and the same is hereby ordered filed as a statement of the evidence to be included in the record on appeal in the above styled case, as provided in Equity Rule 75.

This the 14th day of April, 1937.

E. MARVIN UNDERWOOD,
United States District Judge.

Filed April 14, 1937.

TITLE OMITTED.

PETITION FOR APPEAL

TO THE HONORABLE E. MARVIN UNDERWOOD, JUDGE OF THE ABOVE ENTITLED COURT:

Comes now W. E. Page, Collector of Internal Revenue, the above named defendant, by Lawrence S. Camp, United States Attorney for the Northern District of Georgia, and M. Neil Andrews, Assistant United States Attorney for said District, his solicitors of record, feeling himself aggrieved by the final decree of this Court entered herein on the 14th day of January, 1937, in favor of the complainant and against the defendant, does hereby appeal therefrom, and from the whole and every part thereof, to the United States Circuit Court of Appeals for the Fifth Circuit for the reasons specified in the Assignment of Errors, which is filed herewith, and he prays that this appeal be allowed, that a citation be issued directed to the above named complainant, commanding it to appear before the United States Circuit Court of Appeals for the Fifth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of record, proceedings, and papers, upon which said decree was made, be duly authenticated and sent to the Circuit Court of Appeals for the Fifth Circuit, in accordance with law and its rules, in order that the errors com-

plained of may be considered and corrected.

April 3, 1937.

LAWRENCE S. CAMP,
United States Attorney.

M. NEIL ANDREWS,
Assistant United States Attorney.

Filed April 3, 1937.

TITLE OMITTED.

ORDER ALLOWING APPEAL

The petition of defendant herein praying an appeal from the final decree heretofore entered in this Court, permanently enjoining the defendant from further proceedings under levies and warrants for distraint referred to in the Bill of Complaint and cancelling levies, warrants for distraint, and liens, likewise referred to in the Bill of Complaint, being presented,

IT IS HEREBY ORDERED that an appeal be allowed to the United States Circuit Court of Appeals for the Fifth Circuit as prayed for, and that a transcript of such part of the record herein as the parties herein by praecipe duly designate be transmitted duly authenticated to said United States Circuit Court of Appeals for the Fifth Circuit in the manner provided by law.

IT IS FURTHER ORDERED that citation to the complainant be issued in regular course.

IT IS FURTHER ORDERED that no bond for costs be required of defendant on said appeal, this being an appeal brought up by the Treasury Department, a Department of the Government of the United States of America, and by direction of the Attorney General thereof.

Dated this 3rd day of April, 1937.

E. MARVIN UNDERWOOD,
United States District Judge.

Filed April 3, 1937.

TITLE OMITTED.

ASSIGNMENTS OF ERROR

Comes now W. E. Page, Collector of Internal Revenue, the above named defendant, by Lawrence S. Camp, United States Attorney for the Northern District of Georgia, and M. Neil Andrews, Assistant United States Attorney for said District, his solicitors of record, and respectfully submits the following Assignments of Error upon which he relies in support of his appeal from the judgment and decree entered on the 14th day of January, 1937, in said cause, in the District Court of the United States for the Northern District of Georgia, and under which Assignments of Error said defendant, as ap-

pellant, seeks reversal of the decision, judgment, and decree of said Court;

I. The Court erred in refusing to sustain defendant's motion to dismiss the bill of complaint and the amendments thereto upon each of the specific grounds therein specifically stated, which motion was made after the close of all the evidence and after both sides had rested, for the reason that the pleadings and the evidence, with every inference of fact that may fairly be drawn therefrom, are sufficient to sustain said motion to dismiss on each of said specific grounds, separately and collectively; and for the further reason that the record contains no sufficient nor substantial evidence to sustain a decree in favor of the complainant and against the defendant, but the undisputed evidence introduced by the defendant is sufficient in law to sustain a decree in favor of the defendant.

II. The Court erred in refusing to specifically or generally find the facts set forth in each of defendant's requested special findings numbered one to twenty-three,, inclusive, in that the evidence conclusively establishes each of such requested findings and the record contains no sufficient nor substantial evidence to sustain any finding to the contrary and against the defendant.

III. The Court erred in refusing to specifically or generally find the facts set forth in defendant's requested special findings numbered VII and XI, each being identical except that VII refers to the Univer-

sity of Georgia and the University of Georgia Athletic Association, and XI refers to the School of Technology and the Georgia Tech Athletic Association, and to find that—

> During the months of September and October, 1934, athletic games and contests were held or played in and upon an athletic field or stadium situated upon the grounds or campus of said University of Georgia, and the general public was admitted as spectators upon the payment of admission charges usually evidenced by tickets, which admission charges were collected and said tickets were sold by said University of Georgia Athletic Association, acting through one Charles E. Martin. During said months of September and October, 1934, such games or contests were held in said stadium, and the funds derived from the collection of admissions or from the sale of tickets to such games and athletic events were collected and held by said University of Georgia Athletic Association to spectators and used by them in gaining admission to said stadium to witness said games or contests had printed on the front or face thereof the words "Est'd Price ....." (with the amount stated in accordance with the location of the seat to be occupied by the spectator), "Tax....." (with the percentage of the admission price due as tax stated, and "Total....." (being the total of Admission and Tax). Printed or stamped on the front of such tickets, there appeared the following statement:
>
> The University of Ga., being an instrumentality of the government of the State of Ga., contends that it is not liable for any admission tax. The amount collected as a tax, as

shown on the face of this ticket, will therefore, be retained by the University as part of the admission unless it is finally determined that the University is liable for the tax.

Upon each of said tickets so sold and for each admission so sold said University of Georgia Athletic Association collected from the purchasers of such tickets or admissions, in addition to the admission price, an amount equal to ten per cent of said admission price as and for the admission tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, being the amount designated on said tickets as "Government Tax."

And the same with respect to the School of Technology and the Georgia Tech Athletic Association, except the name "School of Technology", "Georgia School of Technology", "Georgia Tech Athletic Association", and A. H. Armstrong" are inserted in lieu of the names: "University of Georgia", University of Georgia Athletic Association" and "Charles E. Martin", in that the undisputed evidence shows such facts and particularly that during September and October, 1934, athletic games were held or played upon the athletic fields at both the University of Georgia and the School of Technology, and that the general public was admitted to such games upon the payment of the admission charges; that tickets of admission were sold and the proceeds thereof were collected by the University of Georgia Athletic Association and by the Georgia Tech Athletic Association, respectively, and the funds derived

from such ticket sales were collected and held by such athletic associations, respectively; and that the federal tax imposed by law was collected by the respective athletic associations from each purchaser of tickets in addition to the admission price; and the record contains no sufficient nor substantial evidence to sustain findings to the contrary and against the defendant.

IV. The Court erred in refusing to specifically or generally find the facts set forth in defendant's requested special findings numbered IX and XIII, and to find that—

> IX. Upon the failure of said University of Georgia Athletic Association or the said Charles E. Martin to make the returns and pay the tax on said admissions, the defendant as collector of Internal Revenue made returns for said University of Georgia Athletic Association of admissions tax due and owing by it for said months of September and October, 1934, showing admissions taxes due and owing thereon, amounting to $895.37, and an assessment in said amount was thereafter duly made by the Commissioner of Internal Revenue against Charles E. Martin, Trustee, University of Georgia Athletic Assn., University of Georgia Department of Athletics, all of Athens, Georgia.
>
> XIII. Upon the failure of said Georgia Tech Athletic Association or the said Dr. A. H. Armstrong to make the returns and pay the tax on said admissions, the defendant as Collector of Internal Revenue made returns for said Georgia Tech Athletic Association of admissions tax due and owing by it for said months of Sep-

tember and October, 1934, showing admission taxes due and owing thereon amounting to $3,914.63, and assessment of said amount was thereafter made by the Commissioner of Internal Revenue against Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Assn., Dr. M. L. Brittain, Dr. M. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Professor Floyd Field, Dr. A. H. Armstrong, Mr. George W. McCarty, Mr. Robert T. Jones, Jr., Mr. Jack Phillips, Mr. D. Kalkhurst, and Mr. Glenn (W. H.), all of Atlanta, Georgia.

in that the uncontradicted and conclusive evidence shows such facts and particularly that the admissions tax on admissions to games held at the University of Georgia and at the School of Technology, respectively, were collected by the University of Georgia Athletic Association and the Georgia Tech Athletic Association, respectively, and not by complainant, and under the law and the evidence said Athletic Associations, respectively, were charged with the duty of making returns and paying the tax; that the defendant, as Collector of Internal Revenue, made the returns for said Athletic Associations, showing the amount due and owing by them respectively to be $895.37 and $3,914.63, respectively; and that assessments in said respective amounts were thereafter duly made by the Commissioner of Internal Revenue against Charles E. Martin, Trustee, University of Georgia Athletic Association, University of Georgia, Department of Athletics, all of Athens, Georgia, in said amount of $895.37; and against Georgia Tech Athletic Associa-

tion, and Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Assn., Dr. M. L. Brittain, M. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Prof. Floyd Field, Dr. A. H. Armstrong, Mr. Geo. W. McCarty, Mr. Robert T. Jones, Jr., Mr. Jack Phillips, Mr. D. Kalkhurst and Mr. Glenn (W. H.), all of Atlanta, Georgia, in said amount of $3,914.63; in that the record contains no sufficient nor substantial evidence to sustain findings to the contrary and against defendant.

V. The Court erred in refusing to specifically or generally find the facts set forth in defendant's requested special findings numbered X and XIV, and to find that—

> X. Upon the assessment of said tax, the defendant as Collector of Internal Revenue demanded payment of the same of the said Charles E. Martin, Trustee, University of Georgia Athletic Assn., University of Georgia, Department of Athletics, and each of them, but said parties and each of them neglected and refused and still neglects and refuses to pay the same or any part thereof, and said tax and the whole thereof remains unpaid.
>
> XIV. Upon the assessment of said tax as aforesaid, the defendant as Collector of Internal Revenue demanded payment of said tax of the said Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Assn., Dr. M. L. Brittain, Dr. M. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Prof. Floyd Field, Dr. A. H. Armstrong, Mr. George W. McCarty, Mr.

Robert T. Jones, Jr., Mr. Jack Phillips, Mr. D. Kalkhurst, and Mr. Glenn (W. H.), and each of them, but said parties and each of them neglected and refused and still neglect and refuse to pay the same or any part thereof, and said tax and the whole thereof remains unpaid.

in that the undisputed and conclusive evidence shows such facts and particularly that upon assessment of the tax involved the defendant, as Collector of Internal Revenue, made demand for payment of said respective amounts from each of the respective parties named in the assessment, but that payment was refused by each of said parties respectively, and the whole of said tax remains unpaid, and the records contain no sufficient nor substantial evidence to sustain findings to the contrary and against the defendant.

VI. The Court erred in refusing to specifically or generally find the facts set forth in defendant's requested special findings numbered XV, XVI, XVII, XIX, XXI, XXII, and XXIII, and to find that—

XV. During the months of September and October, 1934, the total admission charges collected, exclusive of Federal taxes to athletic games and contests, by said University of Georgia Athletic Association was not less than $8,953.70.

XVI. During the months of September and October, 1934, the total admission charges collected, exclusive of Federal taxes to athletic games and contests, by said Georgia Tech Athletic Association was not less than $39,146.30.

XVII. On or about October 24, 1934, and subsequent to the assessment of the taxes due the United States by said University of Georgia Athletic Association for said months of September and October, 1934, said defendant, as Collector of Internal Revenue, duly filed for record in the office of the Clerk of the District Court of the United States for the Northern District of Georgia, and also in the office of the Recorder of Clarke County, Georgia, a notice of tax lien on all the property of said University of Georgia Athletic Association as authorized by Section 3186 of the Revised Statutes, as amended by Section 613 of the Revenue Act of 1928.

XIX. On October 25, 1934, and subsequent to the assessment of the taxes due the United States by said Georgia Tech Athletic Association for said months of September and October, 1934, said defendant as Collector of Internal Revenue duly filed for record in the office of the Clerk of District Court of the United States for the Northern District of Georgia and also in the office of the Recorder of Fulton County, Georgia, a notice of tax lien on all the property of said Georgia Tech Athletic Association as authorized by Section 3186 of the Revised Statutes, as amended by Section 613 of the Revenue Act of 1928.

XXI. On or about November 30, 1932, there was filed in the office of the Collector of Internal Revenue for the Collection District of Georgia on Treasury form 729 by Georgia Tech Athletic Association, verified by Floyd Field, Treasurer, a return of admissions taxes for the month of October, 1932, on account of admissions to athletic events held at the School of Technology

during said month, amounting to $5,111.37, and said Georgia Tech Athletic Association paid said tax on December 1, 1932.

XXII. On or about December 21, 1932, there was filed in the office of the Collector of Internal Revenue for the Collection District of Georgia on Treasury Form 729 by Georgia Tech Athletic Association, verified by Floyd Field, Treasurer, a return of admissions taxes for the month of November, 1932, on account of admissions to athletic events held at the School of Technology during said month, amounting to $5,848.80, and said Georgia Tech Athletic Association paid said tax on December 23, 1932.

XXIII. Thereafter and on or about July 11, 1933, said Georgia Tech Athletic Association filed with the Commissioner of Internal Revenue a claim for refund of $11,181.62 for admissions taxes for the months of October and November, 1932, and January and February, 1933, upon the ground that the Georgia Tech Athletic Association is an instrumentality of a political subdivision of the State of Georgia and exempt from the imposition of the Federal admissions tax. Said claim for refund was thereafter rejected by the Commissioner of Internal Revenue, of which rejection the said Georgia Tech Athletic Association was advised by letter dated October 11, 1933. Said claim for refund was rejected upon the ground that said admissions were not exempt from taxation by reason of the provisions of subdivision (e) of Section 500 of the Revenue Act 1926, which was added by Section 711 (c) of the Revenue Act of 1932.

in that the conclusive and uncontradicted evidence

establishes such facts; and the record contains no sufficient nor substantial evidence to sustain findings to the contrary and against the defendant.

VII. The Court erred in refusing to make defendant's requested conclusion of law numbered II, and to conclude:

> That the plaintiff has failed to sustain the burden of proving a cause for equitable relief in its favor against the defendant.

in that the record contains no sufficient nor substantial evidence to sustain a decree for a permanent injunction or a decree for a declaratory judgment against the defendant.

VIII. The Court erred in refusing to make defendant's requested conclusion of law numbered III, and to conclude:

> That the pleadings and the evidence in this case are insufficient in law to sustain a judgment and decree in favor of the plaintiff and against the defendant.

in that the record contains no sufficient nor substantial evidence to sustain a decree in favor of complainant and against the defendant, but the undisputed evidence introduced by the defendant is sufficient in law to sustain a decree in favor of the defendant.

IX. The Court erred in refusing to make defendant's requested conclusion of law numbered IV, and to conclude:

That under the law and the evidence the University of Georgia Athletic Association, its officers, agents, and employees, and the Georgia Tech Athletic Association, its officers, agents, and employees have collected for the United States of America admission taxes upon athletic games and events held during the months of September and October, 1934, in the respective amounts of $895.37 and $3,914.63, on account of taxes imposed by Section 500 (a) of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, which said respective amounts are special funds in trust for the United States, pursuant to the provisions of Section 607 of the Revenue Act of 1934.

in that the undisputed evidence conclusively establishes the facts therein stated, and that such facts are within the purview of Section 607 of the Revenue Act of 1934.

X. The Court erred in refusing to make defendant's requested conclusion of law numbered V, and to conclude:

That under the law and the evidence the taxes involved in this proceeding were lawfully assessed by the Commissioner of Internal Revenue against the University of Georgia Athletic Association, Charles E. Martin, Trustee, University of Georgia Department of Athletics, and against Georgia Tech Athletic Association, Georgia Tech Athletic Association, Inc., Board of Control, Georgia Tech Athletic Assn., Dr. M. L. Brittain, Dr. M. V. Skiles, Dr. J. B. Crenshaw, Dr. Gilbert Boggs, Professor Floyd Field, Dr. A. H. Armstrong, Mr. George W. McCarty,

Mr. Robert T. Jones, Jr., Mr. Jack Phillips, Mr. D. Kalkhurst, and Mr. Glenn (W. H.), respectively, and each of them.

in that the undisputed evidence conclusively establishes the facts therein stated, and that such facts are within the purview of Title V of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, Section 3176 of the Revised Statutes, as amended by Section 619 (d) of the Revenue Act of 1928, and Section 3182 of the Revised Statutes.

XI. The Court erred in refusing to make defendant's requested conclusion of law numbered VI. and to conclude:

> That under the law and the evidence the admissions to the athletic games or contests held or played at the University of Georgia and at the School of Technology during the months of September and October, 1934, to which the public was admitted upon the payment of an admission charge and participated in by students in attendance at said University and at said School of Technology, respectively, were subject to the tax imposed by Section 500 of the Revenue of 1926, as amended by Section 711 of the Revenue Act of 1932.

in that the pleadings and the evidence with every inference of fact that may be fairly drawn therefrom, are sufficient to sustain a decision and decree against the complainant and in favor of the defendant, and the record contains no sufficient nor sub-

stantial evidence to sustain a decision and decree to the contrary.

XII. The Court erred in refusing to make defendant's requested conclusion of law numbered VII. and to conclude:

> That under the law and the evidence the tax imposed by Section 500 (a) of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, is not a direct tax but is a tax on admissions which is paid by the purchaser.

in that the pleadings and the evidence with every inference of fact that may be fairly drawn therefrom, are sufficient to sustain a decision and decree against the complainant and in favor of the defendant, and the record contains no sufficient nor substantial evidence to sustain a decision and decree to the contrary.

XIII. The Court erred in refusing to make defendant's requested conclusion of law numbered VIII. and to conclude:

> That under the law and the evidence, if the State of Georgia or complainant has any interest in the funds derived from proceeds of admissions charged and collected from spectators admitted to athletic games or contests held or played at the University of Georgia or at the School of Technology and participated in by students in attendance at said University or at said School of Technology in competition with students in attendance at other colleges and universities; and if the State of Georgia or com-

plainant is engaged in carrying on said intercollegiate contests and charging admissions thereto, it or they to that extent are acting as a private corporate individual engaged in a commercial enterprise.

in that the evidence conclusively shows that the amounts collected as tax on admissions to athletic contests carried on by the University of Georgia Athletic Association and the Georgia Tech Athletic Association were collected from purchasers of such admissions for the United States as and for the tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, and would not have been so collected had it not been for the provisions of such statute, and, further, that the conducting of athletic contests and charging admissions thereto on the scale and for the purpose and for the revenue shown by the evidence is not primarily an educational undertaking or an undertaking of the State essential to the execution of any of its governmental functions.

XIV. The Court erred in refusing to make defendant's requested conclusion of law numbered IX. and to conclude:

That under the law and the evidence neither the State of Georgia, the Regents of the University System of Georgia, the University of Georgia, the University of Georgia Athletic Association, the School of Technology, nor the Georgia Tech Athletic Association has any right, title, or interest whatsoever in or to any part of that part of the proceeds of admissions to athletic contests and games, collected during

> the months of September and October, 1934, from spectators as a Federal tax by the University of Georgia Athletic Association and the Georgia Tech Athletic Association, respectively, upon the admissions to such games held or played at said University or at said School of Technology.

in that the evidence conclusively shows that the amounts collected as tax on admissions to athletic contests carried on by the University of Georgia Athletic Association and the Georgia Tech Athletic Association were collected from purchasers of such admissions for the United States as and for the tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, and would not have been so collected had it not been for the provisions of such statute, and that such tax would not have been collected had it not been for the provisions of the statute, and that the proceeds of such collections have been kept separate from any funds belonging to complainant or belonging to either of the athletic associations.

XV. The Court erred in refusing to make defendant's requested conclusion of law numbered X. and to conclude:

> That the complainant is not a department of the State government of Georgia.

in that the record contains no sufficient nor substantial evidence to sustain the averments to the contrary contained in the bill of complaint, nor has complainant sustained the burden of proving such

verments, but on the contrary the evidence conclu-
vely shows that complainant is not a department
f the state government of Georgia.

XVI. The Court erred in refusing to make de-
endent's requested conclusion of law numbered
I.and to conclude:

> That neither the complainant, the University of Georgia, the University of Georgia Athletic Association, Charles E. Martin, the School of Technology, the Georgia Tech Athletic Association, nor Dr. A. H. Armstrong, nor either or any of them, nor any person or persons acting by, through, or for them, or any of them, in the promoting, sponsoring and/or holding of intercollegiate athletic contests between teams composed of students of the University of Georgia and/or the School of Technology and teams composed of students of other colleges and universities, or between teams composed of their own students, respectively, to which the public is admitted upon the payment of an admission charge and for which an admission charge is made, is a governmental agency engaged in carrying out an essential governmental function, and no part of the funds involved in this proceeding is the property of complainant or subject to its use for any purpose whatsoever.

n that the evidence conclusively shows that the
mounts collected as tax on admissions to athletic
ontests carried on by the University of Georgia
thletic Association and the Georgia Tech Athletic
ssociation were collected from purchasers of such
dmissions for the United States as and for the tax

imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, and would not have been so collected had it not been for the provisions of such statute, and, further, that the conducting of athletic contests and charging admissions thereto on the scale and for the purpose and for the revenue shown by the evidence is not primarily an educational undertaking or an undertaking of the State essential to the execution of any of its governmental functions.

XV. The Court erred in refusing to make defendant's requested conclusion of law numbered XII. and to conclude:

> That this suit is specifically prohibited by the provisions of Section 3224, Revised Statutes.

in that the record contains no sufficient nor substantial evidence from which any conclusion or inference can be drawn that there exists any special or extraordinary circumstances sufficient to remove this case from the inhibitions of Section 3224, Revised Statutes.

XVI. The Court erred in refusing to make defendant's requested conclusion of law numbered XIII. and to conclude:

> That complainant has a plain, adequate and complete remedy in the ordinary course at law.

in that complainant has failed to sustain its burden of proving that it is without a plain, adequate and complete remedy at law, while on the contrary under

the law the person receiving any payments for admissions, and collecting the amount of the tax imposed by Section 500 (a) of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, upon payment of the tax, may file a claim for the refund thereof, and in case of rejection of such claim, may maintain an action at law for the recovery of all or any part of the amount so paid which he may claim to have been exacted illegally, whereby this proceeding is prohibited by the provisions of Section 267, Judicial Code.

XVII. The Court erred in refusing to make defendant's requested conclusion of law numbered XIV. and to conclude:

> That there is no actual controversy between complainant and defendant or between any parties over which this Court has jurisdiction within the purview of the Declaratory Judgment Act..

in that under the law and the evidence this is a proceeding involving a Federal tax, and the maintenance of such a proceeding is prohibited by Section 274 (d) of the Judicial Code, as amended by Section 405 of the Revenue Act of 1935..

XVIII. The Court erred in refusing to make defendant's requested conclusion of law numbered XV. and to conclude:

> That this proceeding is not authorized by the provisions of the Declaratory Judgment Act and cannot be maintained.

in that under the law and the evidence this is a proceeding involving a Federal tax, and the maintenance of such a proceeding is prohibited by Section 274 (d) of the Judicial Code, as amended by Section 405 of the Revenue Act of 1935.

XIX. The Court erred in refusing to make defendant's requested conclusion of law numbered XVI. and to conclude:

> That under the law and the evidence the complainant is not entitled to the relief prayed for in a court of equity.

in that this is a proceeding for a decree enjoining the collection of a Federal tax and for a declaratory judgment with respect to the constitutionality of the taxing statute and complainant has failed to establish, either by pleading or proof, any facts which would legally or equitably entitle it to any such relief.

XX. The Court erred in refusing to make defendant's requested conclusion of law numbered XVII. and to conclude:

> That under the law and the evidence the record does not contain any substantial evidence to sustain findings of fact and conclusions of law and decree in favor of the plaintiff and against the defendant.

in that the evidence conclusively shows that the transactions involved are taxable within the meaning of Title V of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, and

Articles 1-3, 12-13, 16, 27, 28-32, 43-46, 53-55, Regulations 43, approved June 14, 1932, promulgated thereunder; and the collection of such tax comes within the purview of Sections 502, 1100, 1101, 1102, 1103 (as amended), and 1104 of the Revenue Act of 1926; and the record contains no sufficient nor substantial evidence to sustain a finding or conclusions to the contrary.

XXI. The Court erred in refusing to make defendant's requested conclusion of law numbered XVIII. and to conclude:

> That the pleadings and the evidence in this case, with every inference that may be drawn from it, are insufficient in law to sustain a judgment and decree in favor of the plaintiff and against the defendant.

in that the record contains no sufficient nor substantial evidence to sustain a decree against the defendant.

XXII. The Court erred in refusing to make defendant's requested conclusion of law numbered XIX. and to conclude:

> That the defendant, on the pleadings and the evidence in this case, is entitled to judgment and decree in its favor against the plaintiff dismissing the bill of complaint.

in that the pleadings and the evidence, with every inference of fact that may be fairly drawn therefrom, are insufficient to sustain a finding of fact or conclusion of law against defendant.

XXIII. The Court erred in making and entering the findings of fact and the whole thereof, made by the Court, for the reason that the same are not in conformity with the provisions of Equity Rule 70½, and fail to find upon all of the issues presented by the pleadings which were sustained by sufficient and substantial evidence in the record and inferences which may fairly be drawn therefrom, in that the conclusive and undisputed evidence establishes that the conducting of athletic games by the University of Georgia Athletic Association and the Georgia Tech Athletic Association, to which admissions are charged, was and is primarily for revenue purposes; that participation in intercollegiate games by students attending the University of Georgia or the School of Technology is not required for graduation, and no credits toward a scholastic degree are given such students by reasons of their participation in such games; that not to exceed 40 or 45 out of the entire student body participate in such games; that special inducements are offered and given to students, such as scholarships, consisting of board and tuition, and other awards, to obtain their services as football players; that intercollegiate athletic contests are not a part of the curricular activities of either the University of Georgia or the School of Technology; that the intercollegiate athletic activities are carried on at each school by separately incorporated athletic associations, and the Department of Physical Education at each school is carried on by separate faculties under the supervision of complainant; that no department or curricular activity of either school is carried on by a separately incorporated corporation or association; that both

the University of Georgia Athletic Association and the Georgia Tech Athletic Association, through their respective officers, agents, servants, and employees, had each collected from purchasers of tickets to their respective intercollegiate events the respective amounts required by law to be collected as admissions tax thereon, amounting in all to the respective amounts involved in this cause; that the proceeds of admissions received by the respective athletic associations were kept in their own separately maintained bank accounts, and were disbursed for their own uses and purposes, respectively, by their own checks signed by their own respective corporate officers, and that no part of such funds was turned over to complainant for its use in any capacity whatsoever, except in one or two instances when loans were made for the completion of a dining room in one of the school dormitories; that notices of liens upon the property and rights to property of each of the athletic associations were filed in the office of the Clerk of this Court and in the offices of the proper county recorders subsequent to the assessment of the tax involved in this cause; that no part of the funds levied upon by the defendant in the respective bank accounts carried by the athletic associations was the property of complainant, but was the proceeds of the amounts collected by the respective athletic associations as tax on admissions pursuant to the applicable taxing statute; that no part of the funds levied upon comes from taxes levied by the State of Georgia on its taxpayers or appropriated for any purpose by the Legislature of Georgia; that a claim for refund of admissions taxes collected by Georgia Tech Athletic

Association on admissions during the fall and winter of that year was filed by it with the Commissioner of Internal Revenue, and the claim was rejected by the Commissioner upon the ground that the said admissions were not exempt from taxation by reason of the provisions of subdivision (e) of Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932; and in that said findings ignore complainant's Exhibits 3, 4, and 8, and defendant's exhibits numbered 1, 2, 3, 4, 5, 5A, 5B, 5C, 6A, 6B, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 25, 26, 27, 28, 29, and 30; and in that said findings are insufficient to support a decree in favor of the complainant and against the defendant.

XXIV. The Court erred in making and entering that part of finding of fact numbered 3, made by the Court, as follows: "These associations have control of physical education", in that such part of such finding is contrary to the evidence, and the record contains no sufficient nor substantial evidence to support such finding of fact, it being established by undisputed and conclusive evidence that physical education at both schools is under the direct control of separately maintained faculties, while intercollegiate athletic activities are under the control of the respective athletic associations.

XXV. The Court erred in making and entering findings of fact numbered 4, 5, 6, and 7, made by the Court, in that such findings are wholly immaterial to any issue in this cause; are based upon immaterial and irrelevant testimony admitted by the Court over the objections of the defendant; are incon-

sistent with all the findings of ultimate and evidentiary facts made by the Court; and are insufficient to support a decree in favor of the complainant and against the defendant.

XXVI. The Court erred in making and entering that part of finding of fact numbered 5 made by the Court, as follows: "Approximately thirty percent of them engaged in intercollegiate contests", in that such part of such finding is contrary to the evidence, and the record contains no sufficient nor substantial evidence to support such finding of fact, it being established by undisputed and conclusive evidence that the tax involved in this cause arose out of admissions to football games played during the months of September and October, 1934; that the major portion of the income of the respective athletic associations is derived from admissions to football games; and that not more than 40 or 45 students from each school were participating in intercollegiate football.

XXVII. The Court erred in making and entering finding of fact numbered 8 made by the Court, as follows:

> The expenses of physical education and athletic programs at each college are supported in large measure from admission charges to athletic contests. In addition, a small student's fee is collected from each student, which is used for such purpose. The entire expenses of physical education and athletic programs in the two colleges are met by said admission charges and student's fees.

in that such finding is contrary to the evidence, and

the record contains no sufficient nor substantial evidence to support such findings of fact, ignores defendant's Exhibits 1 and 3, being reports of audits of the accounts of University of Georgia Athletic Association and Georgia Tech Athletic Association for the year involved, showing receipts and disbursements of the respective athletic associations, and showing that no part of said funds was paid over to complainant for its use in any manner whatsoever, offered and received in evidence without objection; and it being established by undisputed and conclusive evidence that the expenses of physical education at each college are not supported from admission charges to athletic contests, but to the contrary, the proceeds of such admission charges are used by such athletic associations in defraying their respective expenses in connection with carrying on their athletic contests and in the purchase of athletic equipment and facilities to enable them to carry on their athletic activities more efficiently.

XXVIII. The Court erred in making and entering finding of fact numbered 12 made by the Court, as follows:

> Upon failure of complainant and its branches and instrumentalities to make returns and pay taxes on said admissions, defendant made returns of same, claimed as due and owing for the months of September and October, 1934, amounting to $895.37 from the University of Georgia Athletic Association, and amounting to $3,914.63 from Georgia Tech Athletic Association. Assessments of said amounts were thereafter made by defendant.

hat such finding is contrary to the evidence; ig-
es compliant's Exhibit 3 and defendant's Ex-
ts 2 and 9, showing the purposes for which the
pective athletic associations were incorporated,
that the assessments were made by the Com-
sioner of Internal Revenue and not by the de-
dant, against the respective athletic associations,
ir officers, agents, and servants, and not against
complainant, offered and received in evidence
hout objection; it being established by undisputed
conclusive evidence that no assessments have
n made against complainant or any of its branch-
or instrumentalities, but that such assessments
e been made against the respective persons re-
ving payments for the admissions involved, be-
the athletic associations and their respective
cers, agents, and employees.

XXIX. The Court erred in making and entering
ling of fact numbered 14 made by the Court, as
ows:

> The ten per cent. of the admissions collected by the two athletic associations was placed in the bank accounts maintained by said associations respectively, but nominally in the name of Charles E. Martin, Trustee, University of Georgia Athletic Association, University of Georgia Department of Athletics, and Athletic Association of University of Georgia; and Georgia Tech Athletic Association.

that such finding is contrary to the evidence, it
ng conclusively established that the amounts de-
ited in the respective bank accounts maintained

by the athletic associations upon which levies were made by the defendant were in fact the actual amounts collected by said athletic associations, as tax, from purchasers of tickets of admission to their respective athletic events, and not ten per cent of total ticket sales.

XXX. The Court erred in making and entering that part of finding of fact numbered 14 made by the Court, as follows: "Thereafter the association filed a claim for refund on behalf of complainant", in that such part of such finding is contrary to the evidence, and the record contains no sufficient nor substantial evidence to support such finding of fact; ignores plaintiff's Exhibits 10 and 11, being claim for refund for taxes on admissions in 1932, filed by Georgia Tech Athletic Association with the Commissioner of Internal Revenue, showing that such claim was filed by the association on its own behalf and not on behalf of complainant, and being the letter from the Commissioner of Internal Revenue to the association notifying it of the rejection of its claim, showing that it is addressed to the association and not to complainant.

XXXI. The Court erred in concluding as a matter of law and adopting conclusion of law numbered 2 made by the Court, as follows:

> The title to all property of every nature whatever and all funds held by complainant, directly or by its agents and instrumentalities, including the funds of said athletic associations, are held by complainant as an instrumentality of the State of Georgia and are the property and funds of the State of Georgia.

in that such conclusion of law is contrary to the evidence, it being established by conclusive and undisputed evidence that the funds levied upon are the proceeds of the amounts collected by the respective athletic associations as the tax imposed by Section 500 of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932, which was kept separate and apart from any other funds in the possession of the respective athletic associations; is contrary to the express provisions of said statute and the applicable provisions of Treasury Regulations 43, promulgated thereunder; ignores and is contrary to the express provisions of Section 607 of the Revenue Act of 1934; ignores and is contrary to the interpretation of a statute of the State of Georgia, to-wit, Georgia Laws, 1931, pp. 20-31, by the court of last resort of the State, as expressed in **State v. Regents of the University System,** 179 Ga. 210; is inconsistent with and not supported by the facts found by the Court; and the record contains no sufficient nor substantial evidence to sustain such conclusion of law.

XXXII. The Court erred in concluding as a matter of law and adopting a conclusion of law numbered 3 made by the Court, as follows:

> Complainant was given by the Act creating it, full authority to establish and approve such rules and regulations and courses of study in its educational program as it saw fit.

in that such conclusion of law infers that intercollegiate athletics is a required course of study at the University of Georgia and at the School of Technol-

ogy, and that such inference is contrary to the evidence, and the record contains no sufficient nor substantial evidence sufficient to sustain such conclusion of law, it being established by conclusive and undisputed evidence that participation in intercollegiate athletics is not required of students in attendance at either of said institutions, nor are credits towards a degree given for any such participation.

XXXIII. The Court erred in concluding as a matter of law and adopting conclusion of law numbered 4 made by the Court, as follows:

> The adoption, direction and supervision by complainant, acting directly or through its agents and instrumentalities, of the program of education at the two branches of the University System of Georgia, the University of Georgia and the Georgia School of Technology, including the promotion of physical training as an integral part of its educational activities, including intercollegiate athletic contests, such as football, and the collection of admission fees at games when admission fees were charged, were, under the decision of the Circuit Court of Appeals in this case, the exercise of an essential governmental function of the State of Georgia; and there existed no liability upon it or its agents or instrumentalities for any Federal admission tax or penalty for failure and refusal to collect any such tax, and an injunction should issue restraining the defendants from attempting to collect the alleged taxes, debt, or penalties, except by due proceedings in a court of competent jurisdiction.

in that such conclusion of law is contrary to the ex-

press provisions of Section 3224, Revised Statutes; and is not supported by any substantial evidence; ignores and is contrary to the express provisions of Section 274 (d), Judicial Code, as amended by Section 405 of the Revenue Act of 1935; ignores and is contrary to the express provisions of Section 267, Judicial Code; ignores and is contrary to the express provisions of Title V of the Revenue Act of 1926, as amended by Section 711 of the Revenue Act of 1932; ignores and is contrary to the express provisions of Section 607 of the Revenue Act of 1934; is contrary to the evidence, it being established by conclusive and undisputed evidence that intercollegiate football is not a part of the program of education at either the University of Georgia or the School of Technology, is not required of students attending either of said institutions, and that no credits towards degrees are given at either of said institutions by reason of participation in intercollegiate football; and the record contains no sufficient nor substantial evidence to sustain such conclusion of law.

XXXIV. The Court erred in making and entering the final decree entered herein by the Court, in that the facts found by the Court are insufficient to support a decree in favor of the complainant and against the defendant, and the record contains no sufficient nor substantial evidence to sustain such decree in favor of the complainant and against the defendant.

XXXV. The Court erred in making and entering the final decree entered herein by the Court, in that

the pleadings and evidence, with inference of fact that may be fairly drawn therefrom, are insufficient to sustain a decree in favor of complainant and against the defendant, but on the contrary, in view of the provisions of Section 3224, Revised Statutes, conclusively show that the Court is without jurisdiction to enter a decree in favor of complainant and against the defendant.

XXXVI. The Court erred in making and entering the final decree entered herein by the Court, in that it is in effect a decree against the United States which may not be sued without its consent and which has not consented to be sued, since the United States is the real party in interest in so far as levies, warrants for distraint, and/or liens for Federal taxes are concerned.

WHEREFORE, defendant and appellant prays that the judgment and decree made and entered by the District Court herein be reversed, and that said cause be remanded to the District Court with instructions to enter judgment and decree for the defendant, dismissing complainant's bill of complaint, and that he be given such other and further relief as to the Court may seem just and proper.

Dated this 3rd day of April, 1937.

LAWRENCE S. CAMP,
United States Attorney.
M. NEIL ANDREWS,
Assistant United States Attorney.

Filed April 3, 1937.

PRAECIPE

TO THE CLERK OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA:

Sir:

You will please prepare a transcript of record to be transmitted to the Circuit Court of Appeals for the Fifth Circuit in pursuance to the appeal heretofore taken in this cause, and include therein the following:

1. The original bill of complaint, omitting Exhibits A-B-C-D.

2. The amendment to the original bill of complaint.

3. The motion to dismiss filed by the defendant.

4. Amendment to motion to dismiss filed by defendant.

5. Motion to strike amendment to petition filed by defendant.

6. Answer.

7. Defendant's motion to dismiss bill of complaint.

8. Defendant's motion for special findings of fact and conclusions of law.

9. Order on motion to dismiss.

10. Complainant's motion for findings of law and fact.

11. Opinion of the Court.

12. Final decree of the Court.

13. Motion to reproduce parts of the testimoney in verbatim form.

14. Order directing the reproduction of parts of the testimony in verbatim form.

15. Statement of evidence.

16. Petition for Appeal.

17. Order allowing appeal.

18. Assignments of Error.

19. Citation with acknowledgment of service thereon.

20. This praecipe including acknowledgment of service.

21. Order for transmission of original Exhibits to appellate court.

22. Clerk's certificate.

Dated this 13th day of April, 1937.

LAWRENCE S. CAMP,
United States Attorney.

M. NEIL ANDREWS,
Assistant United States Attorney,
Solicitors for Defendant.

The foregoing praecipe for the transcript of record on appear is hereby approved by the appellee.

April 13, 1937.

M. J. YEOMANS,
Attorney General State of Georgia.
HAROLD HIRSCH and
MARION SMITH,
M. E. KIRKPATRICK,
Counsel for Complainant-Appellee.

Filed April 13, 1937.

ORDER DESIGNATING PHYSICAL EXHIBITS.

It appearing to the Court that in this cause it is necessary and proper in the opinion of the Court that certain original papers and documents should be inspected by the Circuit Court of Appeals for the Fifth Circuit upon appeal to said Court, and by the Supreme Court, in case said cause should go to that Court; it is therefore

ORDERED, that the following papers, to-wit: Plaintiffs Exhibits numbered 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12, and Defendant's Exhibits numbered 1, 2,

3, 4, 5A, 5B, 5C, 6A, 6B, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, referred to and described in the Statement of Evidence, be transmitted by the Clerk of this Court to the Clerk of the Circuit Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, and if this case should be taken to the Supreme Court of the United States, to the Clerk of that Court, at Washington, District of Columbia, and returned after the disposition of said appeal or appeals to the Clerk of this Court.

Dated this 13th day of April, 1937.

E. MARVIN UNDERWOOD,
District Judge.

Filed April 13, 1937.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF GEORGIA
ss:

I, J. D. Steward, Clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached 428 pages contains, a true, full, complete and correct copy of the original record, assignments of error and all proceedings had in the matter of W. E. PAGE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA, appellant, versus REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, appellee, as specified in the praecipe of counsel herein and as the same remains of record and on file in the clerk's office of the said District Court at Atlanta, Georgia, except that the original citation with acknowledgement of service thereon is included herein in the stead of a copy thereof.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said District Court, at Atlanta, Georgia, this April 16th, A. D., 1937.

J. D. STEWARD,
Clerk, U. S. District Court,
Northern District of Georgia.

(SEAL)

By C. A. McGREW, Deputy Clerk.

Original citation omitted from the printed record, the original thereof being on file in the office of the clerk of the United States Circuit Court of Appeals.

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Extract from the Minutes of October 11th, 1937

No. 8466

V. E. PAGE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA (MARION H. ALLEN, COLLECTOR, ETC., SUBSTITUTED IN PLACE OF W. E. PAGE, COLLECTOR, ETC., DECEASED)

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

Argument and submission

On this day this cause was called, and, after argument by Carlton Cox, Esq., Special Assistant to the Attorney General, for appellant, and Marion Smith, Esq., for appellee, was submitted to the Court.

Opinion of Court and dissenting opinion of HUTCHESON, Circuit Judge, filed December 18, 1937.

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 8466

V. E. PAGE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA (MARION H. ALLEN, COLLECTOR, ETC., SUBSTITUTED IN PLACE OF W. E. PAGE, COLLECTOR, ETC., DECEASED), APPELLANT

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, APPELLEE

Appeal from the District Court of the United States for the Northern District of Georgia

Opinion

December 18, 1937

SIBLEY, Circuit Judge: The Board of Regents of the University System of Georgia and the corporation styled Regents of the University System of Georgia, sought an injunction against W. E. Page, as Collector of Internal Revenue, to stop his seizure under warrants for federal taxes on admissions to intercollegiate football games during September and October 1934, of moneys which the Regents claim. A declaratory decree settling the federal nontaxability of athletic contests held under authority of the Regents was also prayed.

This court has heretofore reversed a dismissal of the bill, and has ordered it tried on its merits. Regents vs. Page, Collector, 81 Fed. (2d) 577. The District Court has found the allegations of the bill proven, and decreed a final injunction. This appeal followed.

Page resigned as Collector pending this appeal, and afterwards died. Marion H. Allen succeeded him in office. On allegations that he was about to carry out what Page had begun, Allen was cited to show cause why he should not be made a party as successor in office under 28 U. S. C. A. Sec. 780. Allen did not controvert the allegations of fact, but objected that the action against Page was a personal one and could not thus be made one against the office of Collector and in effect against the United States. The statute referred to, so far as material to be quoted, provides: "When during the pendency of an action, suit, or other proceeding brought by or against an officer of the United States * * * relating to the present or future discharge of his official duties, such officer * * * ceases to hold such office, it shall be competent for the court * * * whether one of first instance or an appellate tribunal, to permit the cause to be continued or maintained against the successor, etc." This case is within the words of the statute. Without enlarging on its purpose and history, we apply it by ordering the successor made a party.

The appellant desires to reopen the questions whether the holders of the money distrained upon, having collected it from ticket purchasers as tax, can deny the validity of the tax when called on to pay it over; and whether injunction is an available remedy to prevent its collection. This court in its former decision held that the money was not collected as a tax, but under a peculiar contract with the ticket buyers whereby the complainants were entitled to assert ownership of it if they could prove that no tax is collectible. It was also held that under the peculiar circumstances, including that just mentioned, injunction was an available remedy. These holdings are adhered to as the law of the case. The next and great question is whether the tax is constitutionally collectible in view of the connection of the Regents with the State government. It will be well to examine first the tax and its incidence, and the status of the Board of Regents.

The tax is imposed by Section 500 of the Revenue Act of 1926, 44 Stats. 91, amended by Section 711 of the Revenue Act of 1932, 47 Stats. 271, and is "a tax of one cent for each ten cents or fraction thereof of the amount paid for admission to any place * * * to be paid by the person paying such admission." Admissions less than forty-one cents are not taxed. Exempted are "any admissions all the proceeds of which inure exclusively to the benefit of religious, educational, and charitable institutions, etc."; but the exemption "shall not be allowed in the case of admissions to any athletic game or exhibition the proceeds of which inure wholly or partly to the benefit of any college or university (including any academy of the

military or naval forces of the United States)." The tax is thus collectible on all athletic games or exhibitions of which any college or university gets all or a part of the proceeds, whether it be a football game, a track meet, or other athletic exhibition; whether an intercollegiate contest or one intra mures; and whether participated in by students or hired athletes. As applied to a State University the tax is to be viewed not simply as one on intercollegiate football games but on all forms of athletic exhibitions to which admission exceeding forty-one cents is charged. Congress expressed no special purpose to single out intercollegiate football contests for taxation. While they were the occasion of the tax before us, the legitimacy of the tax as applied to a State university involves a wider field of discussion.

The tax is laid on the purchasers of admissions, but the duty and responsibility of collecting and accounting for it is put on those selling the admissions. Where the State and its agencies are sellers, there is thus an immediate and direct burden imposed by the federal government. But if this burden be ignored, that laid upon the patrons of the athletic exhibition is felt by the State, for the tax tends to deter patronage. It may have to be absorbed by the State by reducing the price of admission. In the present case the football tickets were sold on a basis of $1.36 for admission and fourteen cents for tax, total $1.50. It seems very probable that $1.50 was the price the public was willing and accustomed to pay, and that the fourteen cents tax, if collectible, was to be absorbed by a reduction in the price.[1] The tax affects the State quite as directly as when the recipient of its bond interest has to pay a federal tax on it, Western vs. Charleston, 2 Pet. 449; or a State judge a federal tax on his salary, Collector vs. Day, 11 Wall. 113; or a State waterworks superintendent a federal tax on his salary, Brush vs. Commissioner, 300 U. S. 352. When it is a question of the federal government burdening by taxation the government operations of the States, or vice versa, it is not the amount of the burden but its real existence and its possibilities that condemn the tax. This is so in this special field of constitutional law because "the power to tax involves the power to destroy," in that the amount of tax if the power be once admitted must be left to the taxing legislature; as was fully explained in McCullough vs. Maryland, 4 Wheat. 316. Whether this stringent rule peculiar to our constitutional system of double government is to be applied in any case depends upon whether the function burdened by the tax is really a governmental function or some business or proprietary enterprise customarily and normally a matter of private operation and within the usual field of taxation. See South Carolina vs. United States, 199 U. S. 437; Metcalfe & Eddy vs. Mitchell, 269 U. S. 514; Brush vs. Commissioner, supra.

[1] The general exemption from the tax of admissions which inure to the benefit of religious, charitable, and educational institutions was made because Congress knew the burden would fall thus on the institutions.

There is a faint contention made here that higher education
a legitimate governmental function, though common schools ar
mitted to be necessary to the success of a democracy. It is true
historically higher education in America was for a long period
nished by church seminaries and privately endowed and ope
colleges, but this was due to the lack of public funds and not
failure to recognize that highly educated leaders are also nece
to the success of democracy. George Washington himself urged
sought to found a college for higher education in Virginia
Thomas Jefferson pushed the idea to fruition in Virginia's Un
sity. Even before this, Georgians were pressing the matter.
Georgia Constitution of 1777, Sec. LIV, provided: "Schools sh
erected in each county and supported at the general expen
the State as the Legislature shall hereafter point out and di
Numerous Acts of the period establishing towns and counties co
provisions for schools and academies in them. When by the A
1784 the Counties of Washington and Franklin were laid out,
thousand acres of land of the first quality were set apart "fo
endowment of a college or seminary of learning." Watkins' D
page 293. The following year, 1785, the University of Georgi
created and its property vested in a corporation styled "The Tr
of the University of Georgia," and its government (subject t
Legislature) was committed to the Trustees and a Board of Vis
The Trustees, appointed by the Governor, with various changes
tinued until 1931, when they were succeeded by the Board of Re
complainants here. The preamble to the ancient Act, Watkins
gest, page 299, is an unanswerable argument for higher educati
a function of democratic government. It reads in part: "As
the distinguishing happiness of free government that civil
should be the result of choice and not necessity, and as the co
wishes of the people becomes the laws of the land, their public
perity and even existence very much depend upon suitably for
the minds and morals of their citizens. * * * This is an infl
beyond the sketch of laws and punishments, and can be claimed
by religion and education. It should therefore be among the fir
jects of those who wish well to the national prosperity to enco
the principles of religion and morality, and early to place the
under the forming hand of society, that by instruction they m
molded to the love of virtue and good order. Sending them a
to other countries for their education will not answer these pu
* * * and will always be the cause of so great foreign a
ments that upon principles of policy it is not admissible, etc."
University of Georgia as a seat of higher learning with branch
many parts of the State, has remained imbedded in the Consti
and the statutes of the State ever since. The State of Georgia
came into the Federal Union with this University declared as a
of its governmental activity.

The Regents were created by the Act of 1931 reorganizing the executive departments of the State. Acts of 1931, page 7. Section 45 is: "There is hereby set up and constituted a department of the State government of Georgia to be known as the Board of Regents of the University System of Georgia. The name of the corporation heretofore established and existing under the name and style 'Trustees of the University of Georgia' be and the same is hereby changed to Regents of the University System of Georgia." Section 48; "The government of the University of Georgia and of all its branches * * * is vested in the Board of Regents." By Section 50 the Board is composed of persons appointed by the Governor and confirmed by the Senate, and the Governor is ex officio a member. Section 51 fixes their term of office, and Section 59 their pay. By Section 77 "The expenses of the Board of Regents other than that of the institutions under its control shall be met by a separate appropriation enacted for its maintenance and support." By Sections 55 and 65 the powers, rights, privileges, and duties of the former Board of Trustees of the University of Georgia are vested in the Regents. These provisions make it very plain that the members of the Board of Regents are public officers having power to govern the University System, and that the corporation styled Regents of the University System of Georgia is a public corporation intended to hold the title to its property and do its business. The relation of the Regents and the Corporation to the State was considered in State of Georgia vs. Regents, 179 Ga. 210. These expressions occur in the opinion: It is thus seen that the Regents of the University System of Georgia is a distinct corporate entity though controlled by a Board of Regents which is designated as a department of the State government." "So long as the Board does not exercise its powers capriciously and arbitrarily, or so as to thwart the purpose of the Legislature in establishing a system of university education, the Board itself must determine what is necessary for the usefulness of the system and thus will govern the University of Georgia and its several branches. The powers granted are broad and comprehensive, and subject to a wise and proper discretion the Regents are untrammeled except by such restraints of law as are directly expressed or necessarily implied." "It may be conceded that the State is the actual and beneficial owner of all property now vested in the Regents of the University System, and that the corporation by that name is the holder only of the legal title." That the Regents are public officers and the funds they raise are public moneys, and specifically those raised by the athletic associations such as are here involved, was emphatically declared by the Legislature in the Act of 1935. Acts 1935, page 171. There can be no doubt that the Board of Regents and the instrumentalities which they employ, including the athletic associations, are governmental agencies of education.

The last and most doubtful question is whether athletic games and exhibitions for which admission is charged can be considered a part

of the governmental function of education at a State university so as to be free of federal taxation. That the Board of Regents have both at the University at Athens and the Technological School at Atlanta made physical education an integral part of the University's function, and that they authorize and supervise public exhibitions for which admission is charged as a part of the program admits of no doubt. The formal catalogues and bulletins of both institutions set forth at length the opportunities and the requirements for physical education. At Athens all students, male and female, are required to take two years of such education, military drill for males being recognized as equivalent. One teaching degree includes sports in its curriculum, being designated to qualify graduates not only to teach in the State High Schools but to direct the physical education in such schools. In both institutions the head of the Department of Physical Education holds the office of Dean of Men in the faculty. Other instructors, often called "coaches," are also members of the faculty. The conduct of athletic contests and the qualifications of contestants are regulated by faculty rules approved by the Regents and are related to scholastic standing. The schedule of contests for each year is approved by the faculty and by the Regents. Their details are handled at each institution by an Athletic Association composed of faculty members and alumni and incorporated to facilitate such business transactions as the improvement of the athletic grounds and equipment. They are wholly under control of the Regents and are their agents. The Chancellor of the University System is himself president of the Athletic Association at Athens. The taxes here in question were assessed against these associations, and the pleadings of the Collector insist that the associations are to be considered separate from the Regents of the University System, but that position is untenable and has been abandoned in argument. The tickets which gave rise to the tax show on their face that they were sold for the University for they state that the University of Georgia contends that there is no liability to the tax, but the University is collecting the fourteen cents as a part of the charge of admission and will retain it as such if a tax is not collectible. The money from admissions is like all other funds of the associations, audited by the State Auditor and as already stated was claimed specifically as the State's by the State Legislature itself in the Act of 1935. The highest State governmental authority has thus ratified the use of the associations and the charge for admissions to the games as proper functions of the University.

Athletics as a formal feature of education is recent in America aside from military and naval exercises. But the conception and practice go back at least to the ancient Greeks. The Olympic and Isthmian games were public institutions designed especially to promote physical development, and their crowns were the honors most sought after. At Athens the stadium was hard by the theater, and both were public institutions. Plato in his Republic names gym

nastics as the second in the trilogy of public educational activities. The Germans today call their high schools gymnasiums. In America the acquisition of grounds for school athletics is held to be a proper educational purpose, and even to authorize condemnation of the land. Reiger vs. Board of Education, 287 Ill. 590; 122 N. E. 838; School District vs. Chelan County, 69 Wash. 189; 124 Pac. 484. Apparatus for football and basketball may be bought with public funds. Anderson vs. Board of Education, 49 N. D. 181, 190 N. W. 807. Damages arising from injuries in the gymnasium and on football field are not recoverable because the activities are a part of the educational program and so a governmental function. Spencer vs. School District, 121 Ore. 511, 254 Pac. 357; Mokovitch vs. School District, 177 Minn. 446, 225 N. W. 292. An athletic association was held exempt from taxation because an educational institution in German Gymnastic Association vs. Louisville, 117 Ky. 958, 80 S. W. 201. Although the scholar for a long period looked down upon the athlete, at this time we are recurring to the ancient idea that the body cannot be neglected while educating the mind.

Public contests are not an abuse of physical education. It is true they employ but a few of the students, but they give stimulus and life to the whole athletic enterprise. "To make the team" in any athletic sport is a supreme incentive to careful and systematic effort; and to star upon it is like an Olympic crown. Great judgment is necessary to prevent the stimulus of publicity from becoming too great, lest the athletic tail be found wagging the dog of mental culture in the schools, but in principle the public exhibition of the best in athletics is not different from the school exhibitions of our boyhood or from the honors and speakerships at Commencements of most colleges.

The contest between colleges in athletics are only a superlative degree of the public exhibition. They resemble the intercollegiate debates of the oratorical department; but the present public taste welcomes the former far more enthusiastically than the latter. Baseball, basketball, tennis, golf, boat-racing, field athletics, as well as football, are made the subject of inter-collegiate contests, but in popularity by far the greatest of these is football. But the record discloses that this was not always so, for baseball greatly overshadowed football until after the World War. The writer can remember when Field Day was the day of glory for athletes at the University.

The charging of admission to athletic contests and exhibitions does not alter their educational or their governmental status, though it adds a danger of prostitution. It is common for educational exhibitions to be financed by admission charges, which have often been also a source of revenue to the school. School exhibitions of the older days were instances. Dramatic entertainments and public debates by students in English education, and by Glee Clubs in musical education, are modern instances. The income from all these at

the University is audited, and the net earnings go to the institution. So it is of athletic events. The University has never had adequate support by appropriations of tax money, and has had to seek other income. It is admitted that the Department of Physical Education could not be maintained but for admission charges. These mainly support that Department, including most of the salaries, the purchase of equipment, and the improvement of the athletic fields, and they help maintain the infirmary; but there have been surpluses turned into the common fund nominally as loans but never repaid. The inter-collegiate football contests at present furnish by far the greater part of this income. The admission charges authorized by the Regents (and claimed by the Legislature) to any student activity, whether athletic, musical, or literary, which is recognized as a part of the educational program, and to be used wholly in its support are in their nature a governmental arrangement for public revenue. Governments raise money by taxation, by licenses, and by selling what they have that is salable. A license may be issued as an aid to regulation under the police power, or it may be for revenue, and in both aspects it is the exercise of a governmental function. An admission ticket to an athletic exhibition held as a part of an educational program, the money to be used for the support of such education, is when issued under authority of the State not unlike a license. It raises money from the purchaser for a public purpose which otherwise would call for taxation. To prohibit or to tax it is an interference with legitimate governmental financing. Each student at the University and the School of Technology is charged at matriculation ten dollars as an athletic fee which helps support the Department of Physical Education and entitles the student to the privileges of the gymnasium and swimming pools and athletic grounds, and to admission to all athletic events. It would hardly be supposed that these fees could be federally taxed, though they are for a seasonal admission to the University and its facilities, and within the words of the statute.

It may be conceded that for the Regents to hire athletes to give performances in order to make money would be taxable, for it would be for the State to enter a commercial field. In exhibitions of the State's own students there is an education of the few who directly participate in coolness and self-control under supreme excitement, in loyalty and teamwork, and a rewarding of them for faithfulness and proficiency in their physical training. There is also stimulated the interest and the efforts of all students in athletics. Between using the students in the Department of Physical Education and hiring performers there is about the difference that existed between the Greek citizen games and the Roman gladiatorial shows. It must be admitted also that there has existed in college football a practice through the use of scholarships or other things of securing

football players rather than students. This abuse has been due more to enthusiastic alumni than to college authorities, but it has in general been corrected. There can be no such charge made against the management of the Regents as exhibited in this record. The patrons of inter-collegiate football games probably do not connect what they see and hear, and especially what they themselves do, with education, but that does not change the ultimate truth. There are also many problems connected with such games that have led some institutions to reject them as undesirable, but their value in the educational program is for the judgment of the educational authorities. Where the State government includes them as useful and incidentally uses them as a source of income it is not for the federal tax officers nor for the judges to overrule their decision. Under long-established principles the United States ought not to tax these admissions, and the statute will be held not to apply to a State university.

Judgment affirmed.

HUTCHESON, Circuit Judge, dissenting:

On the former appeal of this cause I dissented [2] from the majority view that the 14¢ per ticket the Athletic Associations had collected from purchasers of admission tickets to intercollegiate football games, in addition to the $1.36 charged for admission, had not been collected as a tax, and that a temporary injunction would lie to prevent its summary collection. I thought then, I think now, that the money was collected as taxes, and that without regard to whether the Government or the Regents should be ultimately declared entitled to it, Art. 1543, 26 U. S. C. A. forbade the issuance of an injunction to restrain its collection. I therefore dissent from the conclusion of the majority on this appeal that the former opinion is the law of the case, and that injunction is an available remedy.

I dissent, too, from their conclusion that the federal tax on admissions to "any athletic game or exhibition, the proceeds of which inure wholly or partly to the benefit of any college or university," may not be lawfully laid upon and collected from persons admitted to intercollegiate football games conducted under the auspices of the Athletic Associations of the University of Georgia and of Georgia Tech; that the Government has no interest in or right to have an accounting for the moneys collected from ticket purchasers under the form of receipt employed in this case, and plaintiff is therefore entitled to a permanent injunction.

I subscribe fully to the views the majority opinion advances, that the fostering and support by the State of higher education, by the establishment and maintenance of State universities for instruction in the higher branches of learning, is not only a legitimate, but an essential Governmental function in a republic like ours. I particu-

[2] 81 Fed. (2nd) at p. 583.

larly subscribe to all that is said about the distinguished part furthering this ideal which Georgia and Georgians early took, a have persistently sustained. I could not do otherwise, for it was Georgian, Mirabeau B. Lamar, who, by his message [3] to the fi Congress of the Republic of Texas, in 1838, was instrumental having set apart enormous grants of public lands for the main nance and establishment of a "University of the first Class." that message he pointed out, with an eloquence which has seld been equalled and never surpassed, the necessity to democratic ins tutions of the furtherance, not only of common schools, but of high education. His inspired words—

"Cultivated mind is the guardian genius of Democracy; and wh guided and controlled by virtue, the noblest attribute of man. is the only dictator that free men acknowledge, the only secur that freedom desires."

are the watchwords of the University system of Texas, and throu its persuasive influence, of the whole educational system of that Sta

I have no difficulty, either, in going along with my associates their expressed view that general provision for instruction in, a the practice of, athletics as a formal feature of college education m be justly regarded as proper, and may be legitimately provided out of public funds.

My associates have referred to the German Gymnasia, the Gre Olympics, the Roman games, to which catalog might well be add the games of England's public schools, the boat races on the Tham They have insisted that public contests are not an abuse of physi education, and that contests between colleges in athletics are only superlative degree of the public exhibition. With all of these tions I fully agree, but with the greatest deference I submit th there is a complete non sequitur between these positions and conclusions the majority draw; (1) that the staging and conduct the colorful spectacles which burst into bloom in stadiums all ov America in October and November of each year, are a part of Governmental function of education in a State university; and that if their staging and conduct are matters of Governmental co cern, the collection from the attending public of an admission tax 14¢ a person, is such a direct burden upon the State governme as that within the applicable decisions, the Government of the Unit States may not require the athletic associations which conduct enterprises, to collect the tax for them from purchasers attending games.

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[3] • • • • "It will be my leading policy • • • to lay the foundations for th higher institutions for moral and mental culture without which no government on de cratic principles can prosper, nor the people long preserve their liberties. • • • we desire to establish a republican government on a broad and permanent basis, it become our duty to adopt a comprehensive and well regulated system of mental moral culture. Education is a subject in which every citizen, and especially every par feels a deep and lively concern. It is one in which no jarring interests are involved, no acrimonious political feelings are excited; for its benefits are so universal that parties are cordially united in advancing it.

"It is admitted by all that cultivated mind is the guardian genius of Democracy, while guided and controlled by virtue, the noblest attribute of man. It is the only dict that free men acknowledge, and the only security that freedom desires."

My associates apparently to their own satisfaction, have rationalized themselves into the frame of mind to believe and to say, that those modern gladiatorial spectacles, conducted in vast and costly amphitheaters, for the excitement and amusement of the American public, all present being keyed to a pitch and under a tension wholly foreign to that ordinarily associated with academic and educational pursuits, are an essential part of higher education in Georgia, and as such, a Governmental function of that State. They have not rationalized me into that frame of mind; I cannot rationalize myself into it. It seems to me that the mental processes by which the din and delight, the struggle and stress, the flying arms and legs, the alternate tangles and extrications, and all the heady actions of an intercollegiate football game are envisioned as higher education, are a "reductio ad absurdum" of even modern higher educational theory. They seem to me in the slangy but expressive vernacular common in the stadiums, to "take higher education for a ride."

The writer of the majority opinion, himself a distinguished product of Georgia's educational system in the days when, as he admits, field day, and not football day, was the day of glory for athletes at the University, and education was education, points with pardonable pride to Georgia's interest in higher education early awakened, and persistently maintained. He justly points out, too, that physical training may properly form a part of university life. With deference, he has not pointed, nor do I think he can point, to any practice, precedent, or principle upon the basis of which it can be successfully maintained, that the conduct of intercollegiate football games for profit, as is now the case in the football season, may be legitimately said to be a Governmental function or activity of any kind, least of all a function of higher education. I think for us to hold otherwise would be having ears, to hear not, and having eyes, to close them to what all but us can see, and this judges may not do.

In the view I take of the matter, the precise setup of a particular State University is unimportant. When the vast spectacular program of fall meetings, of which we take judicial notice, is considered, it is quite evident that from the time the football season opens in early fall, until it closes at Thanksgiving, with its post season spectacles in the Rose Bowl, the Sugar Bowl, the Orange Bowl, the Cotton Bowl, and other bowls galore, it presents a vast hippodrome, colorfully staged and segmentally divided into rings upon rings, where here one set of gladiators, there another, meet and engage in deeds of derring-do, to the frantic cheering of assembled thousands of half mad spectators. More, on game days hundreds of thousands of radios all over the United States pick up the dramatic voices of announcers, and a portion of every program in every moving picture theater during the whole season carries on.

In such view particular arrangements of particular colleges for obtaining performers in this vast series of spectacles, as well as particular arrangements each makes for drawing public interest and public money, fade into insignificance.

We judicially know that in the football season, from coast to coast, from lakes to Gulf, these gigantic, commercialized activities, these intercollegiate football games, absorb the public attention, priming in interest any other form of public spectacle. We judicially know that during the period the members of the football team, at Tech there were fifty, at Georgia about the same, become men set apart. They have their own training table, their own rules. Glorified men at arms, they go abroad, the fighting men of their universities, bringing to it, if they have been well scouted, garnered, and trained, fame, honor, and money galore. If they have not been, no fame, no honor, and a much smaller portion of the gate receipts.

We judicially know that in these games there is a guarantee and division of gate receipts between athletic associations of the respective colleges, and that the greater the fame and prowess of the teams, the greater the gate receipts. We judicially know that the size of the gate receipts has no relation whatever to the educational standing of the colleges, or to that of the members of the teams but entirely to the skill and prowess of the teams in ground gaining, and to that of the individual members, the combatants on the field, in running, blocking, tackling, interfering, kicking, passing, and receiving.

We judicially know that there is quite a difference of opinion among educators and those interested in education, as to whether intercollegiate football games, as they are conducted, are in danger of degenerating into a racket, or have justified themselves. We judicially know, too, that there is no difference of informed, academic, as opposed to legalistic opinion anywhere, upon the proposition that intercollegiate games in themselves, are not part of higher education, and that it is only by dint of the greatest struggles and precautions, on the part of the various conferences which govern these football games, directed toward maintaining scholastic standing and preventing professionalism in too aggravated a form, that they are conducted without great injury to the cause of higher education. But we know, too, that it is thought by many that so managed and conducted, the money and athletic prestige gained for particular colleges by outstanding teams, make the games worth the candle.

When the matters of which we take judicial notice are put to one side, and this particular record is examined, it is found to be not only teeming with evidence as to, but crying out, that the prime reason and incentive for the conduct of intercollegiate football games on the scale and in the manner on which they are being conducted by the

eorgia and Tech Athletic Association is a financial one,[4] and that ithout the financial returns from them, the games, and the stadiums which they are played, indeed the department of Physical educaon itself, would vanish like the mists of the morning.[5]

When it is considered that the record shows that these great edutional exhibitions of the higher learning, these intercollegiate footll games, take in, for Georgia, in an ordinary season of two months early $75,000, and more than that for Tech, and of course substanally the same amount under their guarantees for the teams with hich these teams compete,[6] when, in short, it is considered that in eptember and October of each year these two colleges take from the ublic on admission tickets, to be divided between themselves and eir competitors, over $300,000 a year, it is at once seen that if this education, truly education pays.

My associates seem to concede that if the Athletic Associations mployed or paid men to play upon the teams, if in short, the teams nd the games were not just the by-product of the higher educational rocess as it operates on the general Georgia student body, this ould deprive the games of their higher educational quality, and bject the patrons to tax.

I cannot see this distinction. But if it is a sound one I think the ecord in this case shows sufficiently to bring it under the rule thus t, that the football squad is a special unit in the University, proided for in large part, by scholarships and allowances built up and

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[4] "Our business manager fixes the price at which we sell football tickets to any parular game. After a period of years we know about what the expenses are, what our kets should be to meet them; that is how we fix the admissions to the games. When refer to expenses I mean the entire expenses of maintaining an athletic department and ging the games, for the purchase of lands, for additional fields, for the maintenance fields, all the salaries of coaches and instructors come out of the proceeds of the nds of the Athletic Associations. The total receipts from Georgia Tech appeared to be excess of $127,000 for the fall of 1934. This is comparable to the receipts from year year from that source, except the boom years 1928 and 1929, the period of our eatest receipts. Our receipts were increased a great deal by $50,000 from the Rose wl game in California in 1929. In that year the school had an excellent team and e total receipts from football in the year were about $200,000."

[5] One of the witnesses for the University of Georgia, when questioned, "What is there out the Department of Physical Education as affects participation in athletic sports at is different from any other department in the University," answered:
"The only difference is that if it were not for the receipts from athletics there would none. No appropriation is made by the State Legislature to go to the Department of ysical Education. If athletic contests were not carried on, we would have no Departent of Physical Education."
A witness for Georgia Tech testified:
"We had a baseball team in 1934. We did not have one in 1935. As to the purpose giving up baseball activities in 1935, college baseball has fallen out. We substituted t ball because instead of having two teams playing hard ball, we could have 30 to 50 ms playing soft ball. There is no student interest in college baseball. There is no blic interest whatever in college baseball."
The President of the University of Georgia testified that they had a college baseball am but it did not pay for itself. "They had a college track team and it did not pay itself. As to all of these intercollegiate sports that we maintain they do not pay for emselves, only football. That is the present public taste. I can remember the time en football did not support itself, and baseball paid the best of all the sports carried It is only since the world war, when people became interested in bodily contact sports, at it has been on a paying basis.
"I regret to say that we could not maintain the physical education we have in athletics thout charging for football games."

[6] The record does not show the amounts of these guarantees, but the audit contains a tement that instead of showing these guarantees in the total amount collected and then ducting them, only the net amounts are given.

maintained by special scouting,[7] and that the intercollegiate acti ties of this picked and special group have no connection whate with either the Department of Physical Education, or the purs of higher learning.[8] Certainly, if they have any connection, it is remote and indirect as that the governmental immunity which mig be extended to the activities of the Department of Physical Edu tion as a part of higher learning, cannot extend to the public exhi tions of the prowess of college football teams. These exhibitio are, in my opinion, as little connected with governmental functi as indirect and remote, as would be the public contests of footb teams recruited from employees of the various instrumentalities the Federal government, beginning with National Banks, listed appellee on page 15 of its brief. I think no one would claim th admissions to games in which football teams maintained by the various governmental activities competed for the public amuseme and the glory and financial advantage of the athletic associatio of these institutions, would be exempt from a State admissions t because the games were part of a governmental function. I can see how any better contention could be made against the federal t for teams maintained by athletic associations of State schools.

Entertaining these views as to the purely business nature a character, from the standpoint of the promoters, of these exhibitio as to which the Government lays a tax upon the spectators, it natural that I should find myself unable to agree that here is edu tion in its higher forms, here a Governmental enterprise.

But if I could agree with my associates that there is more higher education here than meets the eye and ear, and that, thou hidden from me, there is a subtle connection between these gam and the Governmental function, I still cannot agree with them th the tax is not collectible. For it seems quite plain to me that t

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[7] Professor Armstrong, Associate Professor of History and Economics, and Chairma the Athletic Association, testified that at Georgia Tech they had an interest in getting g players. The general plan of Tech is to find out about them; send out questionnaires quiring whether they are interested in football, whether they need scholarship paid; n rally coaches are interested in getting good players.

It was testified that while the Athletic Association does not have a department of Ph cal Education, in which a degree is granted, it contributed in 1934 around $7,500 to general scholarship fund.

To the question of the Court, "Is any such elaborate and careful effort made to ascert the availability of students particularly qualified along intellectual lines in history, e neering or surveying, or the like," Dr. Armstrong answered: "No, we don't make particular effort to find them, but if a principal is as much interested in his honor stude as a coach is interested in his high school honor students, he can get the same attent as a boy that is playing football."

Q. "As a matter of actual practice and experience, that is not done?

A. "I am afraid the principals do not take the same interest.

Q. "As I understand it, all of the effort is made toward those who have phys prowess?

A. "That is true of the Physical Educational Department.

Q. "Take the Department of History. Have they a separate business manager, co and do they keep a separate set of books, and do they have people who are employe coach and train up special students, and do they have special ones to go out and these students?

A. "No sir; there is no other department in the college that that applies to other t the Social; that is not a strictly educational department."

[8] "Football is not a required subject for a degree for a student who is enrolled in Department of Physical Education. Any student who makes the Varsity Team in Geor or Georgia Tech and goes out and plays in either of these activities, is merely doing voluntarily. He gets no credit for this in the University of Georgia, and in Georgia T there is no Department of Physical Education in which a degree is granted.

"Degrees in the Department of Physical Education are given to those who complete course for teaching physical education."

collection from the attending public of an admissions tax of 14¢ a person is not such a direct burden upon the State government as that within the applicable decisions, the Government of the United States may not require the Athletic Association which conduct the enterprises, to collect the tax for them from purchasers attending the games.

At the risk of weakening the force of my dissent here, by taking broader ground than necessary, I might as well say that I have long believed and unsuccessfully asserted,[9] that claims of governmental immunity from taxation have in the past been too liberally granted. In my view, the test of the constitutionality of a State or Federal tax upon the operations of the United States or of the States, or the means chosen for the execution of the powers of either government, should be whether the taxing statute discriminates against the government affected, and in favor of other taxpayers. But it is by no means necessary for me to go that far here. For under the law as it is now settled by the decisions, particularly that of the United States Supreme Court in James vs. Dravo Contracting Company, delivered December 6, 1937, the levying of a tax not on the State, the Universities, nor on the Athletic Associations, but on and to be paid by the purchasers of tickets is not and cannot be, a direct burden upon a Governmental function of the State of Georgia. Indeed, it falls so indirectly and so remotely as that it cannot really be regarded in law as any burden at all. If a tax on the gross receipts of a contractor derived from a contract between him and the United States, for the construction of locks and dams in a navigable stream is not invalid as laying a burden upon the operations of the Federal Government, certainly a tax upon purchasers of tickets to a football game cannot be invalid as imposing a burden upon the operations of the State Government.

If the Georgia and Tech Athletic Associations competed only with each other or with other State institutions, in public football exhibitions, there would still be no reason, in my opinion, for a holding that they could not be required to collect an admissions tax from purchasers of tickets to them.

When it is considered that hundreds of athletic associations of colleges and universities not conducted by States are engaged in these competitions for public favor, and that their spectators are subject to the same kind of tax, and when it is further considered that such athletic associations take part in the very games Georgia and Tech conduct, and part of the proceeds goes to them, the claim of governmental immunity from a tax which falls uniformly on all colleges taking part in this spectacular seasonal bid for public patronage and favor, seems to me strained and farfetched indeed.

I respectfully dissent.

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[9] Texas Co. vs. Carmichael, 13 Fed. Sup. 246; Therrell vs. Commissioner, 88 Fed. (2d) 872.

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Extract from the Minutes of December 18, 1937

No. 8466

W. E. PAGE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA, MARION E. ALLEN, COLLECTOR, ETC., SUBSTITUTED IN PLACE OF W. E. PAGE, COLLECTOR, ETC., DECEASED

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

Judgment

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Georgia, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby affirmed.

HUTCHESON, Circuit Judge, dissenting.

United States of America, United States Circuit Court of Appeals, Fifth Circuit

Clerk's certificate

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 430 to 457 next preceding this certificate contain full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8466, wherein W. E. Page, Collector of Internal Revenue for the District of Georgia (Marion H. Allen, Collector, etc., substituted in place of W. E. Page, Collector, etc., deceased), is appellant, and Regents of the University System of Georgia is appellee, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 429 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 10th day of March, A. D., 1938.

[SEAL]

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.
By E. WENDLING,
Deputy Clerk.

(Supplemental transcript of record)

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

United States Circuit Court of Appeals, Fifth Circuit

No. 8466

W. E. PAGE, COLLECTOR OF INTERNAL REVENUE, APPELLANT

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, APPELLEE

Motion of appellee to have Marion H. Allen substituted for W. E. Page, deceased

Filed September 27th, 1937

Come now Regents of the University System of Georgia, appellee in this case, and respectfully show to the Court the following:

1. Within six months next preceding the filing of this application the appellant herein, W. E. Page, has departed this life.

2. Marion H. Allen has been appointed Collector of Internal Revenue of the Atlanta, Georgia, District, and is now fulfilling his duties as such.

3. Appellee desires, pursuant to 28 U. S. C. § 780, to substitute Marion H. Allen in place of W. E. Page.

4. Appellee further shows that the policy of attempting to enforce the Federal Amusements Tax on admissions charged to athletic contests given by appellee is a policy established by the Commissioner of Internal Revenue, and is under departmental practices and regulations binding on all Collectors.

5. Appellee therefore says that Marion H. Allen is required to follow said policy, and hence adopts the attitude of his predecessor and will proceed to enforce said policy with respect to applying the Federal Amusements Tax to the said admissions.

Wherefore, appellee prays that the said Marion H. Allen be substituted in place of the said W. E. Page, herein, and the Court permit this cause to be continued and maintained with the said successor in office so substituted.

(Signed) M. J. YOEMANS,
Attorney General of the State of Georgia.
(Signed) MARION SMITH,
Special Assistant Attorney General of the State of Georgia.
(Signed) M. E. KILPATRICK,
Special Assistant Attorney General of the State of Georgia.

United States Circuit Court of Appeals, Fifth Circuit

No. 8466

W. E. PAGE, COLLECTOR OF INTERNAL REVENUE, APPELLANT

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, APPELLEE

Order to show cause on motion of appellee

Filed September 27, 1937

The application of the appellee herein to have Marion H. Allen substituted in place of W. E. Page, having been filed and presented to the Court; it is now ordered that the said Marion H. Allen answer said application and show cause why he should not be so substituted.

The Court sets this application for hearing before the Court at Atlanta, Georgia, on the 11th day of October 1937, at ten o'clock A. M.

Let the answer of the respondent be served upon the counsel for the appellee at least five (5) days in advance of the time set for hearing.

It is ordered that the Marshal of the Northern District of Georgia serve a copy of this order and of the application to substitute the said Marion H. Allen upon the said Marion H. Allen, and make a return of his action to the Court.

(Signed) SAML. H. SIBLEY,
U. S. Circuit Judge.

SEPT. 25, 1937.

Marshal's return on motion to substitute

Filed October 2, 1937

Return on service of writ

No. 8466

UNITED STATES OF AMERICA,
Northern District of Georgia, ss:

I hereby certify and return that I served the annexed Application of appellee to substitute Marion H. Allen on the therein-named Marion H. Allen, Collector of Internal Revenue for Georgia, by handing to and leaving a true and correct copy thereof with Frank B. Boyer, Jr., Chief Deputy Collector, Room 236 P. O. Bldg., personally at Atlanta, Fulton Co., Ga., in said District on the Twenty-eight day of September, A. D. 1937.

(Signed) CHAS. H. COX,
U. S. Marshal.

By (Signed) HENRY H. GREEN,
Deputy.

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 8466

W. E. PAGE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA, APPELLANT

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, APPELLEE

Notice and affidavit of Marion H. Allen in connection with motion of appellee to substitute him appellant

Filed October 5th, 1937

To MARION SMITH, Esq.,
Attorney at Law, Atlanta, Georgia:

Please take notice that the undersigned, Marion H. Allen, United States Collector of Internal Revenue for the District of Georgia, appearing specially for that purpose and not otherwise, will on the 11th day of October 1937, upon the convening of said Court, or as soon thereafter as counsel may be heard, move the Honorable United States Circuit Court of Appeals for the Fifth Circuit at the courtroom of said Court in the United States Court Building at Atlanta, Georgia, to set aside and vacate that certain order made and entered by said Court in the above entitled cause on the 27th day of September 1937, directing the said Marion H. Allen to appear before the Court at Atlanta, Georgia, on the 11th day of October 1937, and answer the application of the appellee, Regents of the University System of Georgia, to have him substituted as the defendant and appellant in the place and stead of W. E. Page, former Collector of Internal Revenue for the said District, who resigned on July 15, 1937, said motion will be made and based upon the following grounds, to-wit:

1. That there is not now and never has been any privity between the said Marion H. Allen and said W. E. Page.

2. That the above entitled action is a purely personal one against the said W. E. Page, wherein the plaintiff appellee seeks to enjoin the commission of acts on the part of the said W. E. Page alleged to be without warranty of law whatsoever and in excess and violation of the duties imposed upon him by law as United States Collector of Internal Revenue for said District.

3. That the bill of complaint herein states no cause of action against the said Marion H. Allen, and that there is not now and never has been any pleading in this action charging him with the commission of the acts set forth in the bill of complaint therein.

4. That there is no statutory or other warrant in law for substituting him in the place and stead of the said W. E. Page as the defendant appellant in this action or for subjecting him to the consequences of the judgment or decree heretofore entered therein on

the 14th day of January 1937, in the District Court of the United States for the Northern District of Georgia, Atlanta Division, against the said W. E. Page as defendant, or to the consequences of any judgment that may be rendered against him or his personal representatives therein, and in this connection that he is not now and never has been one of the personal representatives of the said W. E. page, deceased.

5. Specifically that Section 7080 of Title 28 of the Judicial Code does not authorize such substitution.

6. That the above entitled Court is without jurisdiction or power to require the said Marion H. Allen to appear in this action or to require that he be substituted as the defendant appellant therein in the place and stead of the said W. E. Page, deceased.

This motion will be made upon the transcript of record in this action; the motion of the appellee Regents of the University of Georgia filed herein on the 27th day of September 1937, praying for the substitution of the said Marion H. Allen as the defendant appellant in the place and stead of the said W. E. Page; said order entered herein on the 27th day of September 1937, directing the said Marion H. Allen to answer said application and to show cause why he should not be so substituted; and the affidavit of the said Marion H. Allen attached hereto and made a part hereof.

(Signed) LAWRENCE S. CAMP,
United States Attorney.
(Signed) M. NEIL ANDREWS,
Assistant United States Attorney.

I have this day delivered the original of the foregoing notice and attached affidavit to Marion Smith, Counsel for Appellee, Regents of the University System of Georgia.

This 5th day of October 1937.

(Signed) M. NEIL ANDREWS,
Assistant United States Attorney.

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 8466

W. E. PAGE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA, APPELLANT

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA, APPELLEE

GEORGIA,
Fulton County, ss:

Before me, the undersigned attesting officer, personally appeared Marion H. Allen, who, being duly sworn, deposes and says:

1. That he is now and ever since the 16th day of July 1937, has been the duly appointed, qualified, and acting United States Collector of Internal Revenue for the District of Georgia; that he assumed the duties of his office on the 16th day of July 1937.

2. That at all of the times mentioned in plaintiff's complaint, from and after the 20th day of June 1933, and up to the 15th day of July 1937, the defendant and appellant in the above entitled action, W. E. Page, was the duly appointed, qualified and acting Collector of said District; that the said W. E. Page resigned on the last mentioned date.

3. That the above entitled action is one of a civil nature in equity, commenced in the District Court of the United States for the Northern District of Georgia, Atlanta Division, and was instituted by the Regents of the University System of Georgia against the said W. E. Page, during his lifetime and while he was holding the office of such Collector.

4. That by their complaint in said action, the complainants sought to enjoin the commission of acts by the said W. E. Page alleged to be beyond the scope of his official duties as such Collector and without warrant of law, in this that the act of Congress under which he proposed to do such acts was null and void because in contravention of the Tenth Amendment to the Constitution of the United States.

5. That on January 14, 1937, during the lifetime of the said W. E. Page and after a trial had in said cause, the said United States District Court entered its final decree against the said Page enjoining and restraining him from the performance of said acts.

6. That in his lifetime, on to-wit, April 3, 1937, and within the time allowed by law, the said W. E. Page as such defendant only appealed to this Court from the said judgment, and in all respects perfected said appeal to and including the filing of the transcript of record on appeal in this Court on the 21st day of May 1937.

7. That there is not now and never has been any privity between your affiant and the said W. E. Page, and that your affiant is not now and never has been one of the personal representatives of the said W. E. Page, and that the appellee does not seek to have him substituted in such capacity.

MARION H. ALLEN.

Sworn to and subscribed to before me this 4th day of October, 1937.

[SEAL] R. S. MOONEY,

Notary Public, Georgia, State at Large.

Extract from the Minutes of October 11, 1937

No. 8466

W. E. PAGE, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF GEORGIA

v.

REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

Order substituting Marion H. Allen, Collector, etc., in place of W. E. Page, deceased

This cause came on this day to be heard upon the motion filed by appellee to have Marion H. Allen, Collector of Internal Revenue for the District of Georgia, substituted as appellant in the place and stead of W. E. Page, Collector, etc., deceased, and on the order of this Court to show cause thereon;

Present: Marion H. Smith, Esq., Counsel for Appellee, Mover; Carlton Fox, Special Assistant to the Attorney General, Counsel for Respondent.

Whereupon, after hearing the oral response of counsel for Marion H. Allen, Collector, etc., to said motion in which response it was agreed that the statements of fact in the motion to substitute were correct, and after arguments of counsel for both parties, Marion H. Allen, Collector, etc., objecting to being made a party;

It is now ordered by the Court that the said Marion H. Allen, Collector of Internal Revenue for the District of Georgia, be, and he is hereby, ordered substituted as appellant in the above entitled and numbered cause, in the place and stead of W. E. Page, Collector, etc., deceased.

United States of America, United States Circuit Court of Appeals, Fifth Circuit

Clerk's certificate

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing pages numbered from 1 to 11, inclusive, contain a true copy of the motion of appellee to have Marion H. Allen substituted for W. E. Page, deceased; order to show cause on motion of appellee; Marshal's Return on motion to substitute; notice and affidavit of Marion H. Allen in connection with motion of appellee to substitute him appellant, and order substituting Marion H. Allen, Collector, etc., in place of W. E. Page, deceased, which were inadvertently omitted from the certified transcript of the record in case No. 8466, wherein W. E. Page, Collector of Internal Revenue for the District of

Georgia (Marion H. Allen, Collector, etc., substituted in place of W. E. Page, Collector, etc., deceased), is appellant, and Regents of the University System of Georgia is appellee, as the same now remains upon the files and records of said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the city of New Orleans, Louisiana, in the Fifth Circuit this 14th day of March, A. D. 1938.

OAKLEY F. DODD,
Clerk of the United States Circuit Court of Appeals, Fifth Circuit.
By E. WENDLING,
Deputy Clerk.

No. 8466

Circuit Court of Appeals, Fifth Circuit

W. E. PAGE, COLLECTOR OF INTERNAL REVENUE
v.
REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA

Stipulation

Whereas the Government is about to apply to the Supreme Court for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit in the above action entered on December 18, 1937, affirming the judgment of the District Court of the United States for the Northern District of Georgia entered on January 4, 1937 (reported in 18 Fed. Sup. 762); and,

Whereas the Clerk of the Circuit Court of Appeals for the Fifth Circuit has failed to certify as a part of the record in said case the opinion and judgment of the said Circuit Court of Appeals rendered on the former appeal on January 20, 1936, and reported Sub. Nom. Regents of University System of Georgia v. Page, numbered 7784, 81 Fed. (2d) 577.

Now, therefore, it is stipulated and agreed by and between the attorneys for the respective parties to said action that the said opinion and judgment, a copy of which is hereto attached, be made a part of the record in said action on petition of the Government to

the Supreme Court for certiorari to review the decision of the Circuit Court of Appeals for the Fifth Circuit entered on December 18, 1937.

March 14, 1938.

LAWRENCE S. CAMP,
U. S. Atty.,
M. NEIL ANDERSON,
Attorneys for Appellant.
M. J. YEOMAN,
Attorney General,
State of Ga.
MARION SMITH,
M. E. KILPATRICK,
Special Asst. Attys. General,
State of Ga.,
Attorneys for Appellee.

Circuit Court of Appeals, Fifth Circuit

No. 7784

REGENTS OF UNIVERSITY SYSTEM OF GEORGIA

v.

PAGE

Jan. 20, 1936

Appeal from the District Court of the United States for the Northern District of Georgia; E. Marvin Underwood, Judge.

Suit for injunction, declaratory judgment, and for general relief by Regents of the University System of Georgia against W. E. Page, Collector of Internal Revenue. From a decree dismissing the bill (10 F. Supp. 901), the plaintiff appeals.

Reversed and remanded for further proceedings not inconsistent with opinion.

Marion Smith and M. E. Kilpatrick, both of Atlanta, Ga., for appellant.

M. H. Eustace, Sp. Asst. to Atty. Gen., and M. Neil Andrews, Asst. U. S. Atty., of Atlanta, Ga., for Appellee.

Before FOSTER and HUTCHESON, Circuit Judges, and HOLMES, District Judge.

HOLMES, District Judge.

This suit in equity was commenced in the District Court of Northern District, by the Board of Regents of the University System of Georgia against the Collector of Internal Revenue to restrain the collection of taxes upon the payment of admissions to athletic games, the proceeds of which inure wholly to the Georgia School of Technology, branches of said system. The appellant was created by an

t of the Legislature of Georgia, in 1931 (Laws Ga. 1931, p. 20) r the purpose of having supervision of the public higher institu-ns of learning in the state, among which were said University and hool. From the bill of complaint, its amendments, and exhibits, appears that during the time involved in this controversy athletic mes or exhibitions, participated in by students, were held upon e athletic fields of each of said institutions. The public was ad-tted to such contests upon payment of the prescribed price of ad-ssion; but whether the amount of admission tax imposed by section 0 of the Revenue Act of 1926, 44 Stat. 91, as amended by section 1 of the Revenue Act of 1932, 47 Stat. 271, was added to the price, a disputed issue to be determined from the amended petition and exhibits. Each admission ticket had printed on its face the price ereof, the amount of federal tax, and the total. The full amount own on the face of each ticket was collected from the purchaser. n the back of each ticket was printed the following: "The Uni-rsity of Georgia, being an instrumentality of the government of e State of Georgia, contends that it is not liable for any admission x. The amount, stated as a tax is so stated because the University required to do so by Treasury regulations pending a decision as its liability in this respect. This amount is collected by the Uni-rsity as a part of the admission and will be retained as such unless is finally determined that the University is itself liable for the tax," e same notice, except for the name "School of Technology," being aced on tickets of the School of Technology.

The Commissioner of Internal Revenue having ruled that state iversities must collect the tax on admissions to football games, e appellant made a return of admission so collected, paid an nount thereon as a tax to the collector for the proper district uch amount not being involved in the present suit), and then ed a claim for refund to cover the amount, but the claim was nied on the ground, among others, that the tax had not been posed on the claimant, but on others from whom the admissions ere collected, and that, not being the taxpayer, appellant could t contest the payment. Warrants of distress and notices of levy ving been served by appellee upon the appellant for subsequent xes, alleged to have been collected during the months of Septem-r and October 1934, from the sale of admissions to games played the University of Georgia and the School of Technology, and per cent. of the amounts so collected and deposited in local banks ving been levied upon by the collector, the appellant filed its bill aying that the appellee be restrained from proceeding further th said attempt to collect said taxes, for a declaratory judgment at no taxes were due, and for general relief.

The court below issued its rule to show cause why the relief ayed for in the bill should not be granted, to which appellee sponded by filing a motion to dismiss the bill. This motion as sustained and a decree of dismissal followed, the court holding,

as contended by appellee, that an injunction is prohibited by section 3224 of the Revised Statutes (26 U. S. C. A. Sec. 1543); that the United States, which is the real party in interest, has not consented to the determination of the question involved by declaratory judgment or decree; that the promotion of athletic games where admission fees are charged is not an essentially governmental function; and that it was not necessary to decide whether the state could be required to act as agent to collect the tax since it had voluntarily done so.

The contentions of appellant are that it is a department of the state government, performing a sovereign function; that the University of Georgia and School of Technology have as parts of their educational curricula athletic departments for the instruction of their students in physical training and education; that the athletic events for which the public is charged admission, which include athletic contests between students of the University of Georgia, the School of Technology, and other colleges, are parts of their educational program; that all funds derived from the sale of such admissions are the property of appellant; and that such admissions are exempt from the payment of the federal admissions tax. The appellant further claims that the amounts for which warrants of distress have been issued are not for taxes assessed against a taxpayer, but for items of a debt owing by an alleged agent; that the money or choses in action which have been levied upon by distrain are not the property of the taxpayer; that the United States government has no lien thereon and no right to seize it by summary process; and that section 3224 of the Revised Statutes does not apply because of the special circumstances which call peculiarly for the interposition of equitable remedies in order to avoid irreparable injury.

(1) We think the court erred in holding that the appellant had voluntarily acted as agent of the federal government in collecting the taxes. If the appellant acted as agent, it did so under coercion brought about by the fear of being mistaken in its expressed opinion that it could not be required to collect taxes for the federal government, and that no taxes were due, because the exhibitions, admissions to which are sought to be taxed, were governmental functions of the state which the United States were without power to tax. The conduct of law-abiding citizens, relying upon constitutional rights but at the same time giving respectful though unwilling obedience to an act of Congress believed to be inapplicable or unconstitutional, should not be distorted into a voluntary assent to the very application of the statute which is being protested against and emphatically challenged. While vigorously denying at all times that any admission tax is due, the appellant first paid it and sought to recover it through administrative channels. This effort failed because the tax payable on admissions is an excise which is added to the price of admission and paid by the purchaser of the ticket. In the absence of a showing that the burden of the taxes was actually borne by it, appellant has

no interest in the subject-matter of the controversy and cannot recover either by administrative claim for refund or action at law. United States v. Jefferson Electric Mfg. Co., 291 U. S. 386, 54 S. Ct. 443, 78 L. Ed. 859; Shannopin Country Club v. Heiner (D. C.), 2 F. (2d) 393; Lafayette Worsted Co. v. Page (D. C.), 6 F. (2d) 399, 400; Bunker Hill Country Club v. United States (Ct. Cl.), 9 F. Supp. 52; Wourdack v. Becker (C. C. A.), 55 F. (2d) 840, certiorari denied 286 U. S. 548, 52 S. Ct. 501, 76 L. Ed. 1285. The admission tax statute (44 Stat. 91, Sec. 500, as amended) provides that the tax is "to be paid by the person paying for such admission." It further provides (44 Stat. 9, Sec. 2) that "the term 'taxpayer' means any person subject to a tax imposed by this Act."

The only other recourse, except the one followed by appellant, was to disregard the law as construed by administrative officers, and to fail or refuse to comply with it and regulations promulgated thereunder by the Commissioner of Internal Revenue. This would have involved financial hazards and risks of criminal prosecutions which no prudent, law-abiding citizen should be required to incur. See section 500 (d) of the Revenue Act of 1926, 44 Stat. 91; section 3176, Revised Statutes, as amended by section 1103 of the Revenue Act of 1926, 44 Stat. 112; section 619 (d) of the Revenue Act of 1928, 45 Stat. 878; sections 502 (d) 1114, and 1123 of the Revenue Act of 1926, 44 Stat. 93, 116, 121; and section 3184 of the Revised Statutes of the United States (26 U. S. C. A. Sec. 1545). The most pertinent provisions thereof are the following:

Section 55 (d). "Whoever sells an admission ticket or card on which the name of the vendor and price is not so printed, stamped, or written, or at a price in excess of the price so printed, stamped, or written thereon, is guilty of a misdemeanor, and upon conviction thereof shall be fined not more than $100.00." 44 Stat. 91, 92.

Section 1114 (b). "Any person required under this Act to collect, account for, and pay over any tax imposed by this Act, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this Act or the payment thereof, shall, in addition *ot* other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, together with the costs of prosecution." 44 Stat. 116.

Section 1114 (f). "The term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs." 44 Stat. 116, 117.

The course taken by appellant seems to us most appropriate. The money was collected by the respective athletic departments under an agreement with the purchasers that, if no tax was due by the University or School of Techonology, the amounts so collected

should be added to the price of admission and retained by the appellant. There was nothing unfair or illegal about such an agreement. It was one of which the United States could not reasonably complain. If the tax was due by appellant or it was legally required to collect the same, it is the duty of the collecting agent to pay it over; if the admissions were immune from federal taxation, there was no valid agency and certainly no obligation to pay anything over to the appellee. We find nothing in the conduct of the Board of Regents to estop it from standing upon its constitutional rights and asserting the invalidity or inapplicability of the alleged tax.

(2) Let us now look at the remedy pursued by, and inquire what remedy is available to, appellee. If his contention is correct, the appellant voluntarily acted as agent in the collection of the tax and became the debtor of the United States. The money collected does not belong to the Government; the title to it is in appellee. Nevertheless, treating the amounts claimed to be due as a tax, the Collector of Internal Revenue prepared and filed returns on behalf of appellant's athletic departments and, thereafter, admissions taxes in the respective amounts were duly assessed against them. Appellee then gave notice to and made demand of the respective departments for the payment of the admissions taxes so assessed on account thereof. Upon failure of such departments to pay as demanded, appellee issued his warrants of distraint, and on October 24, 1934, levied upon the bank accounts in which were deposited the funds alleged to have been collected as and for the tax on such admissions, and filed notices of liens thereon. As the appellant is not the taxpayer but merely an alleged debtor for money had and received (United States v. Johnston, 268 U. S. 220, 226, 45 S. Ct. 496, 69 L. Ed. 925), if the appellee is correct in his contention that the appellant voluntarily acted as agent in the collection of the admission taxes, the question immediately presents itself whether the collection of a debt against one other than a taxpayer may "be enforced through the secret findings and summary action of executive officers." Penalties against third parties, not taxpayers, may not be so enforced. Lipke v. Lederer, 259 U. S. 557, 42 S. Ct. 549, 66 L. Ed. 1061; Fontenot v. Accardo (C. C. A. 5) 278 F. 871; Ledbetter v. Bailey (D. C.) 274 F. 375, 382; Middleton v. Mee (D. C.) 277 F. 492, 499; Pool v. Walsh (C. C. A.) 282 F. 620; Thome v. Lynch (D. C.) 269 F. 995; Long v. Rasmussen (D. C.) 281 F. 236; Trinacia Real Estate Co. v. Clarke (D. C.) 34 F. (2d) 325; Livingston v. Becker (D. C.) 40 F. (2d) 673; Lion Coal Co. v. Anderson, Collector (C. C. A.) 62 F. (2d) 325; Hubbard Inv. Co. v. Brast (C. C. A.) 59 F. (2d) 709, 710. The power of Congress to provide for the collection of admissions taxes by assessment and warrant of distraint against the appellant may be conceded, provided the business engaged in is not an essentially governmental function; but there is no clear statutory authority for so doing, as in section 280 of the

enue Act of 1926, 44 Stat. 61, dealing with the analogous liability
a transferee of the assets of a taxpayer. Phillips v. Commis-
ner of Internal Revenue, 283 U. S. 589, 51 S. Ct. 608, 75 L. Ed.
).

3–5) In the present case, there is no special statute which author-
the assessment by the Commissioner against the appellant or its
nches of admissions tax which it may have collected, and none
ch authorizes the collection thereof by seizure and sale of appel-
's property under warrant of distraint. The assessment in this
by the commissioner was evidently made under section 3176
Revised Statutes, as amended by section 619 (d) of the Revenue
of 1928, c. 852, 45 Stat. 791 (U. S. C., Supp. VII, title 26, Sec.
4). The statute relied upon to authorize distraint for collection
dmissions tax is section 1109 of the Revenue Act of 1926, 44 Stat.
No Reference is made to admission taxes either in said section
3 of Revised Statutes, as amended, or in said section 1109 of the
enue Act of 1926; but it is not necessary for us to construe these
utes because (if it be conceded that assessment and collection
summary process may ordinarily be made), nevertheless, we are
pinion that appellant has stated a case for equitable relief. As-
ing in the bill that it is exempt from the tax, and the duty to
ect it, for the reasons stated; and being unable to pay the tax
sue for its recovery, or otherwise to test its liability with refer-
e thereto—the appellant is entitled to equitable relief by injunc-
to prevent the threatened sale of its property for a tax it does
owe or for a debt which it disputes and has never had an op-
tunity to deny in court. The enactment of the Act of March 2,
, 14 Stat. 475, which became Rev. St. Sec. 3224 (26 U. S. C. A.
1543), was merely declaratory of the prior rule that courts of
ty will not restrain in the collection of a tax upon the sole
und of its illegality. The rule is not absolute, and is inappli-
e in extraordinary and exceptional circumstances. The absence
plain, adequate, and complete remedy at law to pay the illegal
and sue to recover it raises an independent ground to support
nctive relief in equity. Such ancient equitable jurisdiction was
abrogated by the above statute which is construed in harmony
h the former equitable doctrine. Miller v. Standard Nut Mar-
ne Co., 284 U. S. 498, 52 S. Ct. 260, 76 L. Ed. 422.

6, 7) The petition alleges the incorporation of appellant as a gov-
mental instrumentality for educational purposes; the promotion
physical training as an integral part of its educational activities,
uding intercollegiate athletic contests, such as football; and its
ection of fees for admission to such athletic contests; but it denies
it "collected any tax for the defendant or for the federal gov-
nent at any time." There is no averment in the petition which
ressly or impliedly traverses these allegations, particularly the
that it has collected no tax for the federal government. It is
tended that the foregoing averments, and others of similar im-

port set forth in the petition are conclusions of law and not allegations of fact. We do not so construe them. We realize that it is often difficult to distinguish in pleadings between allegations of fact and conclusions of law; and we are mindful of the rule that, in case of doubt or ambiguity, the petition should be construed most strongly against the pleader; but we find therein no admission of having collected, or of liability to collect, the tax, and no allegation of conduct on the part of appellant or its branches which estops them from denying having voluntarily acted as agent of the federal government in the collection thereof. It is further repeatedly alleged in the petition that in collecting the admission fees the Board of Regents was acting for the state of Georgia in performing a purely governmental function, namely, the education of youth. We are unable to say, from other allegations in the petition or from common knowledge, that these are either mere conclusions of law or erroneous statements of fact. They are clearly intended as factual averments. The language of the pleader is positive and unambiguous. We think the issues as to the collection of taxes, the governmental character of the exhibitions, and the incidental relation of the fees charged for admissions thereto, should be met by an answer to the petition. The plaintiff is required to make only a short and simple statement of the ultimate facts upon which relief is asked, omitting any mere statement of evidence. Equity Rule 25, 28 U. S. C. A. following section 723. General certainty is sufficient. It is not necessary to aver all the minute circumstances which may be proven in support of the general statement or charge in the bill. St. Louis v. Knapp, S. & Co., 104 U. S. 658, 661, 26 L. Ed. 883.

(8) According to the contention of appellee, the courts are closed to appellant, in most difficult circumstances. It must either surrender its claims of immunity from federal taxation or incur the risk of committing a felony through its officers or employees. It cannot pay the alleged tax and seek a refund, because the burden of payment is borne by the purchasers of the tickets. For the same reason it cannot recover in an action at law. Yet it is clear from any view of the case that appellant itself owes no tax. Its sole liability, if any, is a duty to collect and faithfully account for it. It denies having made any collection thereof, while admitting having set aside out of its admission fees an amount, at least, equal to the taxes claimed. The motion to dismiss admits every allegation of fact in the petition which is well pleaded. Like a demurrer, the motion must be based entirely upon facts stated in the bill of complaint. It cannot invoke in its support any fact whatever which is not contained therein, except one of which the court takes judicial knowledge.

(9, 10) We deem it premature at this time to make any announcement on the asserted claim of liability for the tax or obligation to collect it. A constitutional question of great importance is involved. The correct answer to it is more aptly to be found in a painstaking examination of the facts and circumstances in evidence

than in hairsplitting technicalities of pleading, however necessary such rules may be ordinarily. The law arises out of the facts in all cases, but, in determining what instrumentalities of a state are exempt from taxation by the federal government, the maxim requires special emphasis. Legal formulas are helpful to classify state activities, but in close cases it becomes necessary to examine the particular facts to determine whether the special instrumentality falls within the category of private business subject to tax or governmental function exempt therefrom. Under our dual system of constitutional government the limitation upon the taxing power must be given a practical construction so as not "to impair either the taxing power of the government imposing the tax * * * or the appropriate exercise of the functions of the government affected by it." Metcalf & Eddy v. Mitchell, 269 U. S. 514, 524, 46 S. Ct. 172, 174, 70 L. Ed. 384; South Carolina v. United States, 199 U. S. 437, 461, 26 S. Ct. 110, 50 L. Ed. 261, 4 Ann. Cas. 737; Flint v. Stone Tracy Co., 220 U. S. 107, 172, 31 S. Ct. 342, 55 L. Ed. 389, Ann. Cas. 1912B, 1312, see also, Fox Film Corporation v. Doyal, 286 U. S. 123, 52 S. Ct. 546, 76 L. Ed. 1010; Willcuts v. Bunn, 282 U. S. 216, 51 S. Ct. 125, 75 L. Ed. 304, 71 A. L. R. 1260; Ohio v. Helvering, 292 U. S. 360, 54 S. Ct. 725, 78 L. Ed. 1307; Gillespie v. Oklahoma, 257 U. S. 501, 42 S. Ct. 171, 66 L. Ed. 338; Kentucky v. Dennison, 24 How. 66, 16 L. Ed. 717; Indian Motocycle Co. v. United States, 283 U. S. 570, 51 S. Ct. 601, 75 L. Ed. 1277.

We think the motion to dismiss should have been overruled, a preliminary injunction issued, an answer required to be filed, and the case heard upon the merits. Pending such hearing an interlocutory injunction should issue restraining the defendant from attempting to collect the alleged taxes, debt, or penalties, except by due proceedings in a court of competent jurisdiction.

Reversed and remanded for further proceedings not inconsistent with this opinion.

HUTCHESON, Circuit Judge (dissenting).

As stated in the majority opinion, plaintiff's suit was "in equity, to restrain the collection of taxes upon the payment of admissions to athletic games." This being so, I think it inescapable that its maintenance was forbidden by section 3224, Rev. Stat., U. S. C. A., title 26, Sec. 154 (now 26 U. S. C. A., Sec. 1543), and that the District Judge was right in refusing the restraining order and dismissing the bill.

I cannot agree with the majority that there are any special circumstances in this case which, within Miller v. Standard Nut Margarine Co., 284 U. S. 498, 52 S. Ct. 260, 76 L. Ed. 422, take it out of the operation of that statute. Especially can I not agree that appellant's situation with reference to the admissions taxes it collected from its patrons, but did not return and pay over, prevents its being distrained for them.

The view of the majority that it is such a case proceeds, I think, from two erroneous assumptions. The first is that appellant is not, as to the admissions taxes collected, obligated to make returns as to,

and account for, and pay them over as a taxpayer. The second is that it may not pay them over and then sue to recover them back.

The statutes and regulations make it clear, I think, that appellant is, as to these admissions taxes collected, a taxpayer to the extent, at least, that as a taxpayer it is obligated to make returns, as a taxpayer it must pay over what it has collected, and as a taxpayer it is subject to be distrained for these collections, if it fails to pay over.

Section 502 (a), (c), and (d), 44 Stat. 93, U. S. C. A., title 26, Sec. 873; section 1102 (a), 44 Stat. 112, U. S. C. A., title 26, Sec. 1254; section 3176, U. S. C. Supp. VII, title 26, Sec. 1524, 45 Stat. 878; section 3184, U. S. C. A., title 26, Sec. 104 (now 26 U. S. C. A., Sec. 1545), make provision for collectors of admissions taxes making returns of and paying the taxes they collect. They authorize the commissioner or a collector to make the return, in case the collector of admissions fails to do so. They authorize the commissioner to determine and assess all taxes on returns so made and further authorize the collector to collect these taxes as other taxes.

The Regulations, Art. 43, provide that every individual, corporation, or association receiving any taxable payment for admissions must collect the tax from the person making such payment at the time the payment is made. Article 54 provides that the person making payment of the taxes so collected may file claim for the refund of the taxes. There is a special provision that a club, which seeks refund of the amount of taxes collected by the club from its members, should make its claim so as to show that it does so with authority. These provisions leave no room for doubt, I think, that when the association collected these admissions it did so under the obligation to return them and pay them over. They leave no doubt that it has the right to file a claim for refund upon the ground it urges that the tax is in effect a tax upon the state and therefore is not collectible, and that by the agreement on the tickets its patrons have assigned the sums in controversy to it to have and keep them as its own, if the United States is not entitled to hold them. United States v. Johnston, 268 U. S. 220, 45 S*t*. Ct. 496, 69 L. Ed. 925, cited by the majority as holding that appellant is not a taxpayer, does not, I think, so hold. The precise question was not before that court. It decided only that one who had collected admissions taxes had not collected them and did not hold them as agent of the United States so as to be guilty of embezzlement in not paying them over. It held that such a collector was a debtor, not a bailee; that the money for the tax was not identified at the outset, but was paid in with the price of the ticket, and nothing in the act required the collector to set up a separate fund in which the part due for admissions taxes should be put. On the question of taxpayer vel non, this that is said in the case, "reports are required only once a month, which does not look as if the Government were dealing with these people otherwise than with others answerable for a tax," indicates that the collector was, rather than that he was not, regarded as a taxpayer. I think it clear that plaintiff

having collected these sums, holds them prima facie at least as to the government, as tax moneys and is subject to pay them over, and upon failure to do so, to distrain for them as tax moneys, so that no injunction suit against their collection can be maintained.

I think it equally plain that appellant has an adequate remedy to pay and recover back.

Bunker Hill Country Club v. United States, 9 F. Supp. 52, and Congressional Country Club v. United States, 44 F. (2d) 266, are Court of Claims opinions in refund suits brought by country clubs to recover back taxes they had collected from their members and had remitted to the collector under statutes requiring them to do so. In both of these cases it was held, against the claim that the tax was unconstitutional, that the tax was a valid charge on the members; that plaintiffs having collected the amounts for their members were "liable for the tax." In both of them the refund was denied, not because plaintiffs had no standing to sue, but because the tax was valid.

Wourdack v. Becker (C. C. A.), 55 F. (2d) 840, does hold that one who, under no obligation or constraint to pay taxes assessed against others, had paid them, was a voluntary payee and could not recover them back. But see Moore Ice Cream Co. v. Rose, 289 U. S. 373, 53 S. Ct. 620, 77 L. Ed. 1265, holding that taxes erroneously paid may be recovered back, though there was neither protest nor duress. See, also, our case of White v. Hopkins, 51 F. (2d) 159, holding that for the purpose of suing for a refund, a taxpayer is "One who pays a tax."

In Shannopin Country Club v. Heiner (D. C.), 2 F. (2d) 393, cited by the majority, a District Judge does hold that a country clubs showing only that it has paid sums paid it by its members as taxes on dues, does not make a case for refund. We need not say whether that case was correctly decided, for it is not authority for a case like this, where appellant suing for a refund shows on the face of its claim for it that the money it sued for was, if not due the government as taxes, its own money by agreement of ticket buyers.

I think it plain, then, that the District Judge was right in refusing the temporary injunction. Whether, as the majority hold, the dismissal of the bill was error, because the case should have been held for decision on the merits on its prayer for declaratory judgment, we need not determine, for the Federal Declaratory Act, Jud. Code Sec. 274 (d), as amended by section 405, Revenue Act 1935, 28 U. S. C. A., Sec. 400), does not now extend to controversies with respect to federal taxes.

Instead, then, of reversing the decree and remanding the cause for hearing on the merits, granting an interlocutory injunction meanwhile, I think we should have affirmed the decree throughout.

I therefore dissent.

Supreme Court of the United States

Order allowing certiorari

Filed April 11, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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